

Highly Confidential - Subject to Further Confidentiality Review

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

-----	)	
IN RE: NATIONAL	)	MDL No. 2804
PRESCRIPTION OPIATE	)	
LITIGATION	)	Case No.
-----	)	1:17-MD-2804
	)	
THIS DOCUMENT RELATES TO	)	Hon. Dan A. Polster
ALL CASES	)	
-----	)	

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

VIDEOTAPED 30(b)(6) DEPOSITION

OF

WALGREENS BOOTS ALLIANCE, INC. a/k/a WALGREEN CO.

BY

EDWARD BRATTON

December 16, 2018

Chicago, Illinois

GOLKOW LITIGATION SERVICES  
877.370.3377 ph | 917.591.5672 fax  
deps@golkow.com

Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



3 (Pages 6 to 9)

Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**





Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**

Page 32

1 MR. MOUGEY: They are.  
 2 (WHEREUPON, certain documents were  
 3 premarked Bratton 30(b)(6) Exhibit  
 4 Nos 5 through 16; Description given  
 5 in Index.)

6 BY MR. MOUGEY:

7 Q. All right. I don't want you to take my  
 8 word for it. We're going to check those.

9 But what you have in front of you, I  
 10 believe, or what I tried to do was to take the  
 11 Bates ranges in No. 2 which are incorporated into  
 12 request 6 and request 7 and those are the stack  
 13 that's in front of you. Okay?

14 So, what I want -- they should be in  
 15 Bates order in the same. If you would go to No. 6  
 16 on Bratton 30(b)(6) 4, I want to go through and  
 17 check off those Bates ranges that we were -- we  
 18 were given today to prepare.

19 A. Okay.

20 Q. Let me know when you get to page 6 on  
 21 Bratton Exhibit 4.

22 MR. MOUGEY: Corey, if you can put the Bates  
 23 ranges up on the screen, that would be great.

24 BY THE WITNESS:

Page 31

1 Q. And almost all of that preparation for  
 2 today has been done in the last two weeks. Am I  
 3 stating that accurately?

4 A. Preparation by me, yes.

5 Q. Yes, sir. So, these notebooks behind  
 6 me, have you been using those over the last two  
 7 weeks to prepare yourself for your testimony today?

8 A. They've been part of my preparation,  
 9 yes.

10 Q. And the notebooks that I have behind me  
 11 that -- I'm assuming you've been through those and  
 12 you're familiar with them, correct?

13 MR. BENSINGER: Asked and answered.

14 BY THE WITNESS:

15 A. Fairly familiar, yes.

16 BY MR. MOUGEY:

17 Q. And you -- you've been using those same  
 18 notebooks over the last two weeks to prepare  
 19 yourself?

20 A. Yes.

21 Q. So, I'm going to hand you what I'm going  
 22 to mark as Bratton 30(b)(6) 5 through Bratton  
 23 30(b)(6) Exhibit 15. Okay.

24 MR. BENSINGER: Counsel, are these premarked?

Page 33

1 A. Okay.

2 BY MR. MOUGEY:

3 Q. So, let's start with the first -- the  
 4 document in front of you. And does the Bates range  
 5 begin with 1854?

6 A. Of Exhibit 5?

7 Q. Yes.

8 A. I do not think so, no.

9 Q. Exhibit 5 should look like this. No?

10 MR. BENSINGER: Mr. Mougey, there are two  
 11 Bates numbers. Perhaps you could direct the  
 12 witness to the Bates number to which you are now  
 13 referring.

14 MR. MOUGEY: Thank you.

15 BY MR. MOUGEY:

16 Q. In the bottom, there is two numbers in  
 17 the right-hand corner and the smaller of which is  
 18 1854; and I think you and I are on the same  
 19 document, but I'm not sure.

20 A. Yes.

21 Q. Does it say 1854?

22 A. Yes.

23 Q. Let's check that one off. I tried to  
 24 get these in order. I'm not entirely sure I did.

9 (Pages 30 to 33)

## Highly Confidential - Subject to Further Confidentiality Review

Page 34	Page 36
<p>1 And if you look at Bratton Exhibit 6,</p> <p>2 the last three digits are 965.</p> <p>3 Do you see that, sir?</p> <p>4 A. Yes.</p> <p>5 Q. And if you look at Bratton 30(b)(6), the</p> <p>6 next digit range is 625.</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So far we have the first three in</p> <p>10 a row, right? We have gone through the first three</p> <p>11 Bates ranges on the bottom of page 6 of the</p> <p>12 combined discovery responses, right?</p> <p>13 A. Yes.</p> <p>14 MR. BENSINGER: Mr. Mougey, you may want to</p> <p>15 identify Exhibit 7. You just omitted to mention</p> <p>16 the Bates range is Exhibit 7.</p> <p>17 MR. MOUGEY: Thank you.</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. And the Bates ranges on Bratton 30(b)(6)</p> <p>20 Exhibit 8 end with 923.</p> <p>21 A. Yes.</p> <p>22 Q. All right. And we can pick up the pace</p> <p>23 here.</p> <p>24 Bratton 30(b)(6) Exhibit 9 end with 503?</p>	<p>1 you just referring to Bratton Exhibit 14?</p> <p>2 MR. MOUGEY: Bratton Exhibit 14, 30(b)(6) 14,</p> <p>3 ends with Bates No. 027. Yes, sir.</p> <p>4 MR. BENSINGER: The copy that you handed to me</p> <p>5 ends with Bates No. 028. I have a loose sheet of</p> <p>6 paper that ends in Bates No. 027, but it does not</p> <p>7 have an exhibit sticker upon it.</p> <p>8 MR. MOUGEY: That's the first page and the</p> <p>9 loose piece of paper that does not have an exhibit</p> <p>10 on it is -- if you'd just handwrite it on there for</p> <p>11 me, that would be great -- that's Exhibit 14.</p> <p>12 Bratton 30(b)(6) 14.</p> <p>13 MR. BENSINGER: So, could you just state, so</p> <p>14 the record is clear, which is the first page and</p> <p>15 which is the second page of Bratton Exhibit 14.</p> <p>16 MR. MOUGEY: "Handling Suspicious Orders" is</p> <p>17 the title of the document, Bates No. 027, which is</p> <p>18 marked as Exhibit 14, and Bates No. 28 is the</p> <p>19 second page. Thank you. Okay?</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. Exhibit 15, Bratton 30(b)(6) 15 --</p> <p>22 MR. MOUGEY: And, Peter, it looks like I have</p> <p>23 a dupe. But it's 27 and 28 is the first one.</p> <p>24 Bratton Exhibit 15 is also Bates No. 028.</p>
Page 35	Page 37
<p>1 A. Yes.</p> <p>2 Q. And we're still going in order and we</p> <p>3 are catching every one on bottom of page 6, top of</p> <p>4 page 7, right?</p> <p>5 A. I believe so, yes.</p> <p>6 Q. And Bratton 30(b)(6) 10 end with the</p> <p>7 Bates numbers 132.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And Bratton 30(b)(6) 11, Bates numbers</p> <p>11 end with 638. We are still going in order, right?</p> <p>12 A. Yes.</p> <p>13 Q. We've got them all so far, correct?</p> <p>14 A. I believe so.</p> <p>15 Q. And Bratton 30(b)(6) Exhibit 12 ends</p> <p>16 with Bates ranges 937?</p> <p>17 A. Yes.</p> <p>18 Q. And Bratton 30(b)(6) Exhibit 13 end with</p> <p>19 Bates ranges Exhibit 342?</p> <p>20 A. Yes.</p> <p>21 Q. And Bratton 30(b)(6) Exhibit 14 ends</p> <p>22 with Bates No. 27, 027?</p> <p>23 A. Yes.</p> <p>24 MR. BENSINGER: Excuse me, Mr. Mougey. Were</p>	<p>1 BY MR. MOUGEY:</p> <p>2 Q. Do you see that, Mr. Bratton?</p> <p>3 A. Yes.</p> <p>4 Q. All right.</p> <p>5 MR. BENSINGER: Mr. Mougey, the document that</p> <p>6 you handed to me that has the exhibit sticker</p> <p>7 Bratton 30(b)(6) Exhibit 15 begins with a Bates</p> <p>8 No. 957.</p> <p>9 MR. MOUGEY: And that mark as 16 for me.</p> <p>10 MR. BENSINGER: So, the exhibit sticker on the</p> <p>11 document is incorrect and I should change it?</p> <p>12 MR. MOUGEY: Exactly what I just said. Why</p> <p>13 don't you mark it as Exhibit 16 for me, Peter. You</p> <p>14 got it? Great. Thank you. All right.</p> <p>15 BY MR. MOUGEY:</p> <p>16 Q. So, it looks like I have got all of the</p> <p>17 exhibits in combined discovery request 2, 6 and 7</p> <p>18 regarding Walgreens suspicious order monitoring</p> <p>19 policies and procedures since January 1, 2006 that</p> <p>20 we just went through, right?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. Okay. Now, you have in front of you it</p> <p>23 looks like four pages of a listing of specific</p> <p>24 information. Is that right?</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 Q. Is that in the notebooks behind me?</p> <p>3 A. Yes.</p> <p>4 Q. Now, the 12 documents that we have just</p> <p>5 gone through that are a response to suspicious</p> <p>6 order monitoring policies combined discovery</p> <p>7 request 2, 6 and 7, I'm assuming that at least</p> <p>8 based on the stack behind me, there are</p> <p>9 significantly more documents in this stack,</p> <p>10 correct?</p> <p>11 A. There is additional documents in the</p> <p>12 folders, yes.</p> <p>13 Q. What I was prepared to do this morning</p> <p>14 is to have you walk me through Walgreens combined</p> <p>15 discovery request 2 with the documents that I was</p> <p>16 provided to prepare for today and have you explain</p> <p>17 Walgreens' suspicious order monitoring policies and</p> <p>18 procedures.</p> <p>19 Are the documents that I just handed</p> <p>20 you, the 12 different documents that were given to</p> <p>21 me to prepare today, are those not enough to</p> <p>22 provide a complete and accurate description of</p> <p>23 Walgreens' suspicious order monitoring policies and</p> <p>24 do I in fact need to reference the documents behind</p>	<p style="text-align: right;">Page 40</p> <p>1 BY THE WITNESS:</p> <p>2 A. I may need to refer to the binders</p> <p>3 during your questioning.</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. Explain to me what you have in front of</p> <p>6 you on those four sheets.</p> <p>7 A. This is a chronology of the documents</p> <p>8 that are in the three binders.</p> <p>9 Q. A chronology of the documents that are</p> <p>10 in the three binders. And how many different</p> <p>11 documents do you have on those four sheets, unique</p> <p>12 documents?</p> <p>13 A. I'm not sure of the count.</p> <p>14 Q. Take a -- take a SWAG at it.</p> <p>15 A. Probably about 50.</p> <p>16 Q. About 50?</p> <p>17 A. Maybe more.</p> <p>18 Q. And we just went through on combined</p> <p>19 responses to our discovery request in response to</p> <p>20 No. 2, we went through about 12, right?</p> <p>21 A. Correct. These are -- incorporate</p> <p>22 multiple topics, but...</p> <p>23 Q. All right. Why don't we start off with</p> <p>24 the stack that I was given. Okay. Why don't we</p>
<p style="text-align: right;">Page 39</p> <p>1 me?</p> <p>2 MR. BENSINGER: Objection; calls for a legal</p> <p>3 conclusion.</p> <p>4 BY THE WITNESS:</p> <p>5 A. I'm not sure.</p> <p>6 BY MR. MOUGEY:</p> <p>7 Q. I mean do you need documents that are in</p> <p>8 these notebooks behind me or are the 12 documents I</p> <p>9 just gave you sufficient to be able to walk us</p> <p>10 through?</p> <p>11 A. I think it would depend on your</p> <p>12 questions. There could be reference that I might</p> <p>13 like to look at from the binders.</p> <p>14 Q. I would like for you to be able to walk</p> <p>15 me through Walgreens' suspicious order monitoring</p> <p>16 policies, procedures, the criteria used in those</p> <p>17 throughout 2006 until the time -- point in time</p> <p>18 when Walgreens stopped distributing.</p> <p>19 Are the 12 documents that I've given you</p> <p>20 enough for you to testify today on Walgreens'</p> <p>21 position regarding its suspicious order monitoring</p> <p>22 policies or do we need to use the box of documents</p> <p>23 behind me?</p> <p>24 MR. BENSINGER: Objection; vague, compound.</p>	<p style="text-align: right;">Page 41</p> <p>1 start off with the very first document that has the</p> <p>2 Bates No. 1854 and it's titled "Handling Suspicious</p> <p>3 Drug Orders."</p> <p>4 A. Okay. It's Exhibit 5?</p> <p>5 Q. Pardon me?</p> <p>6 A. That's Exhibit 5?</p> <p>7 Q. Exhibit 5. Thank you, yes.</p> <p>8 Now, sir, explain to me what this</p> <p>9 document is. What is it?</p> <p>10 A. This was a document for the distribution</p> <p>11 centers that detailed the policy regarding</p> <p>12 suspicious order reporting.</p> <p>13 Q. If I look under <a href="http://snetapp">http://snetapp</a> on the</p> <p>14 very bottom of the page.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And is that a designation off of or an</p> <p>18 HTP off of Walgreens' intranet?</p> <p>19 A. I believe so.</p> <p>20 Q. And this is</p> <p>21 <a href="http://handlingsuspiciousdrugorders.htm">handlingsuspiciousdrugorders.htm</a>.</p> <p>22 Do you see that, sir?</p> <p>23 A. Yes.</p> <p>24 Q. And <a href="http://walgreens.com/prodpublishers/dea/">walgreens.com/prodpublishers/dea/</a></p>

Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 42</p> <p>1 security/handlingsuspiciousorders.htm. Correct?</p> <p>2 MR. BENSINGER: Objection.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Yes.</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. And, sir, this was Walgreens' suspicious</p> <p>7 order monitoring policy at least of beginning at</p> <p>8 the beginning of 2006, correct, sir?</p> <p>9 A. This document indicates it goes back to</p> <p>10 1998, but at least 2006, yes.</p> <p>11 Q. It does. You see that in the upper</p> <p>12 right-hand corner where it says "Originated" --</p> <p>13 upper-left hand corner, "Originated: 9/8/2008,"</p> <p>14 correct?</p> <p>15 Do you see that, "Originated 9/8/98"?</p> <p>16 A. Oh, '98. Yes.</p> <p>17 Q. Yes.</p> <p>18 A. Sorry. I thought you said 2008.</p> <p>19 Q. I might have. "Originated 9/8/98"?</p> <p>20 A. Yes.</p> <p>21 Q. But I don't have the copies from 9/8/98</p> <p>22 until the revised 2/15/05. Do you see the date</p> <p>23 right above it?</p> <p>24 A. I do.</p>	<p style="text-align: right;">Page 44</p> <p>1 BY THE WITNESS:</p> <p>2 A. This document was used by the DCs in</p> <p>3 conjunction with other policies and procedures that</p> <p>4 they -- they had based on my interviews with them.</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. Because what we have in front of us, and</p> <p>7 let's just continue to the next page so we have the</p> <p>8 whole thing, and this next page is titled "Handling</p> <p>9 Suspicious Orders and Loss of Controlled Drugs."</p> <p>10 Do you see that, sir?</p> <p>11 A. I do.</p> <p>12 Q. And the "Policy, Distribution centers</p> <p>13 must file all Suspicious Control Drug Orders</p> <p>14 reports for five years. The administration manager</p> <p>15 must complete the Report of Theft of Loss of</p> <p>16 Controlled Substances (DEA Form 106) when any of</p> <p>17 the following circumstances occur: A theft of</p> <p>18 controlled drugs, no matter how small (also file a</p> <p>19 police report); a substantial loss; all in-transit</p> <p>20 losses or thefts as described above."</p> <p>21 I didn't read everything, but does that</p> <p>22 fairly capture the three bullet points?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, is there any other manual</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Are you familiar with what reiterations,</p> <p>2 if any, there were from 9/8/98 to 2/15/05?</p> <p>3 A. I don't believe we were able to -- to</p> <p>4 find those documents. So, I'm not familiar with</p> <p>5 them.</p> <p>6 Q. So, it originated in some form and</p> <p>7 fashion in '98; and the next revision we can tell,</p> <p>8 at least from this document, was in 2/15/2005,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. "Handling Suspicious Orders. The</p> <p>12 Logistics and Planning Department sends the</p> <p>13 Suspicious Control Drug Orders report to all</p> <p>14 distribution centers. The report lists controlled</p> <p>15 drug orders that may be of unusual size for a store</p> <p>16 in its category, of unusual frequency for a store</p> <p>17 in its category, deviating from a normal pattern</p> <p>18 for a store in its category."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Okay. And this manual section is the</p> <p>22 entirety, this section, of what Walgreens had in</p> <p>23 place in its manual beginning in 2006, correct?</p> <p>24 MR. BENSINGER: Objection; mischaracterization.</p>	<p style="text-align: right;">Page 45</p> <p>1 section that encapsulates Walgreens' position at</p> <p>2 any point in time from 2005 to the beginning of</p> <p>3 2012?</p> <p>4 MR. BENSINGER: Objection; mischaracterization.</p> <p>5 BY THE WITNESS:</p> <p>6 A. A manual? Not that I have been able to</p> <p>7 discover or find.</p> <p>8 BY MR. MOUGEY:</p> <p>9 Q. Not that you have been able to discover.</p> <p>10 Not that anybody has shown you, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Now, when I say "a manual," are you and</p> <p>13 I on the same page? A document that encapsulates</p> <p>14 the policies, procedures, governing Walgreens'</p> <p>15 conduct to manage suspicious order monitoring</p> <p>16 policies?</p> <p>17 A. Correct.</p> <p>18 Q. Now, this document that we have in front</p> <p>19 of us, Bratton 30(b)(6) Exhibit 5, does not give</p> <p>20 any guidance for Walgreens regarding the criteria</p> <p>21 to use to identify unusual size, correct?</p> <p>22 A. Correct.</p> <p>23 Q. It doesn't give any guidance on what</p> <p>24 constitutes unusual frequency, correct?</p>

12 (Pages 42 to 45)

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 46</p> <p>1 A. Correct.</p> <p>2 Q. It doesn't give any criteria on what</p> <p>3 constitutes deviating from a normal pattern,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. It doesn't provide any thresholds,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Doesn't provide any parameters, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Doesn't provide any definitions for any</p> <p>12 of those sections, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Now, it does not designate on Bratton</p> <p>15 30(b)(6) Exhibit 5 whether or not suspicious orders</p> <p>16 are sent to the DEA, correct?</p> <p>17 A. It does not in this page, no.</p> <p>18 Q. It doesn't in either of these two pages,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. There is nothing in Walgreens' manual</p> <p>22 about whether or not due diligence is performed</p> <p>23 prior to shipment, correct?</p> <p>24 A. Not on this page, no.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. -- after the 2005 date that would</p> <p>2 describe our handling of.</p> <p>3 Q. A variety of documents?</p> <p>4 A. Um-hmm.</p> <p>5 Q. And that variety of documents, is that</p> <p>6 what you have in kind of a theme list or issue in</p> <p>7 the four pages in front of you?</p> <p>8 A. Some of those characterize our systems</p> <p>9 and policies around controlled substance order</p> <p>10 monitoring.</p> <p>11 Q. If I'm an employee at Walgreens at</p> <p>12 this -- from the date of this manual, 2005 on,</p> <p>13 where would I go to find Walgreens' suspicious</p> <p>14 order monitoring policies and procedures?</p> <p>15 MR. BENSINGER: Objection; mischaracterization.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I believe that those employees would</p> <p>18 reach out to the relevant teams to ask about the</p> <p>19 procedures.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. The relevant teams. All right.</p> <p>22 Now, there is 250,000 employees at</p> <p>23 Walgreens. Where in this manual section that's in</p> <p>24 play as of '05, where does it tell me who to ask in</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. There is nothing in these two pages,</p> <p>2 Bratton 30(b)(6) Exhibit 5, the Walgreens manual</p> <p>3 that's in play as of 2/15/05, of whether due</p> <p>4 diligence is performed at all on suspicious orders,</p> <p>5 correct?</p> <p>6 A. Not on this document, no.</p> <p>7 Q. Can you point me to any other document</p> <p>8 at Walgreens from -- that was in full force and</p> <p>9 effect at the same time as Bratton Exhibit 30(b)(6)</p> <p>10 5, any document, that encapsulates Walgreens'</p> <p>11 policies and procedures for suspicious order</p> <p>12 monitoring?</p> <p>13 A. During what time period?</p> <p>14 Q. At the time that this policy was in</p> <p>15 effect in this manual section that we're looking at</p> <p>16 in Bratton 30(b)(6) 5.</p> <p>17 A. So, I believe --</p> <p>18 MR. BENSINGER: Objection; mischaracterization.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I believe that this policy is still in</p> <p>21 effect to this day, so there could be a variety of</p> <p>22 documents --</p> <p>23 BY MR. MOUGEY:</p> <p>24 Q. I'm not --</p>	<p style="text-align: right;">Page 49</p> <p>1 that 250,000 people?</p> <p>2 MR. BENSINGER: Objection; mischaracterization.</p> <p>3 BY THE WITNESS:</p> <p>4 A. It does not. However, this policy</p> <p>5 specifically is dealing with DC center employees,</p> <p>6 so it wouldn't be relevant to all 250,000</p> <p>7 employees.</p> <p>8 And from my understanding, the</p> <p>9 distribution center was in contact and knew the</p> <p>10 teams to reach out to if they had questions.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. Oh. So, this policy is, according to</p> <p>13 your testimony today, is just for the distribution</p> <p>14 centers?</p> <p>15 A. I believe so.</p> <p>16 Q. But the distribution centers, sir, what</p> <p>17 was their role in suspicious order monitoring</p> <p>18 policies and procedures at the point in time that</p> <p>19 this manual came into play in 2005, the document we</p> <p>20 have in front of you?</p> <p>21 A. What was --</p> <p>22 MR. BENSINGER: Objection. Objection;</p> <p>23 mischaracterization, vague.</p> <p>24 BY THE WITNESS:</p>



## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 50</p> <p>1 A. What was their role in producing this 2 document? Or what was their role in -- 3 BY MR. MOUGEY: 4 Q. What was their role in Walgreens' 5 suspicious order monitoring policies and 6 procedures? 7 A. You want me to describe the actions that 8 they took to monitor? 9 Q. I do. What was their role? 10 A. Sure. So, the distribution center staff 11 would, in early 2006, '7, at this time period, 12 would -- there was a query that they would run in 13 the mornings and they would identify orders of 14 unusual size with that query. 15 They -- the SAIL coordinators would run 16 that and, if they saw fit, would provide additional 17 details to management in the distribution center. 18 Additionally, the staff in the vault at 19 Perrysburg would be familiar with orders and so if 20 they were to see an order of unusual size or 21 quantity, they would reach out to their immediate 22 supervisor, one of which was Deb Bish, and she 23 would -- she -- in our interviews with her, she 24 indicated that if they saw an unusual order, they</p>	<p style="text-align: right;">Page 52</p> <p>1 are -- are detailed in an e-mail from our -- from 2 Dwayne Piñon to DEA agent Barbara Dobric, and it 3 discusses how we were reporting at that time; and I 4 believe there was a request at that time to modify 5 the reporting to match the Chemical Handler's 6 Manual Appendix E-3. But it discusses some of the 7 reporting we were doing at that time. 8 Q. The only document -- can you come up 9 with anything else? 10 A. One moment, please. 11 There's another e-mail in 2008 from 12 Dwayne Piñon to Lisa Sullivan in which they discuss 13 some of our reporting practices and monitoring 14 practices pursuant to Appendix E-3. 15 I'm sorry. What was the end of the time 16 frame you were asking? 2008. 17 Q. 12/31/2008. 18 A. I think that's all the documents that I 19 have in that time period. 20 Q. So, the only thing from January 1, 2006 21 to the end of December 2008 is Bratton 30(b)(6) 5 22 that we just went through, right? 23 A. Um-hmm. 24 Q. And two e-mails.</p>
<p style="text-align: right;">Page 51</p> <p>1 would reach out to the store and attempt to 2 investigate what -- why the order was of unusual 3 size and they might modify or change or delete that 4 order depending on the results of their 5 conversations. 6 Q. What is the basis for your -- your 7 testimony? What are you referring to? 8 A. I am -- this is based on interviews with 9 distribution center staff. 10 Q. So, there is no written policy or 11 procedure that you just referenced that -- that 12 process you just referenced? 13 A. Not that I'm aware of for this time 14 period or for the 2005, '6, '7 period, no. 15 Q. Why don't you -- let's do it this way. 16 Why don't you tell me when is the first 17 document that you have that you relied on for your 18 testimony today that, outside of Bratton 30(b)(6) 19 Exhibit 5, from January of 2006 until 12/31 of 20 2008, what written document encapsulates or 21 describes Walgreens' suspicious order monitoring 22 policy and procedures? 23 A. One moment. 24 Some of the processes or procedures</p>	<p style="text-align: right;">Page 53</p> <p>1 And you just put that notebook away. 2 Would you read those two, the Bates numbers of 3 those two e-mails. 4 A. Sure. Bates No. WAGMDL00387642 through 5 664 -- 645. Ends in 645. 6 Oh, there is a -- there is an additional 7 one, WAGMDL00387646 through 7650. And then the 8 Mapes e-mail is WAGMDL003876635 through 637. 9 Q. So, how many documents total was that? 10 A. I believe that's three. 11 Q. That's three docs. 12 A. Yeah. 13 Q. Is that including Exhibit 5, the policy 14 section? 15 A. No. Four with Exhibit 5. 16 Q. So, four with the policy section? 17 A. Correct. 18 Q. Three e-mails and one policy section. 19 Do I have that right? 20 A. Correct. 21 Q. Now, would you look through the combined 22 discovery responses that we went through, the 12 23 documents. We have the manual. 24 A. This is on page 6 of Response 2?</p>

Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**





Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



20 (Pages 74 to 77)

Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**





Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**





Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



40 (Pages 154 to 157)

Golkow Litigation Services - 877.370.DEPS



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



45 (Pages 174 to 177)

Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**





Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**

Page 192

1 and explain to me what, if any, other reports or  
2 mechanisms was Walgreens using post-2006 to  
3 identify suspicious orders?

4 A. There was also line limits that were in  
5 place. So, that is a process that no more than  
6 a -- there is a maximum upper limit to the quantity  
7 per line item that can be shipped.

8 In discussions with the inventory and DC  
9 folks, they believe that line limits were in place  
10 throughout this time, though until later we were  
11 not able to definitively establish on what  
12 products, but from their recollection they talked  
13 about line limits.

14 Q. I apologize for interrupting, but help  
15 me. Are line limits different than the excessive  
16 quantity query?

17 A. Yes.

18 Q. Okay. And, so, when you say line  
19 limits, help me understand a little bit what you're  
20 talking about because -- this is out of the  
21 distribution center?

22 A. Correct.

23 Q. Okay. So, start from scratch. What are  
24 line limits?

Page 193

1 A. Line limit is, it refers to a line on  
2 the order and it is the maximum quantity for a  
3 particular product that that line can have the  
4 quantity be. So, for example, 100 tablets of  
5 alprazolam can't exceed 5 bottles on any order.

6 Q. Have you seen any reports that were  
7 generated identifying orders that exceeded the line  
8 limits?

9 A. The line limit would be a hard stop that  
10 can't be exceeded.

11 Q. But have you seen any reports  
12 identifying instances where that happened?

13 A. I have not.

14 Q. Have you seen any written policies or  
15 procedures identifying what the criteria is for  
16 when that happens?

17 A. I have not -- I have seen e-mails and  
18 presentations that speak about what drugs were  
19 subject to line limits, but not what the quantity  
20 and the number was at the time of the line limits.

21 Q. Anything to see what the line limits  
22 were, how they were created?

23 A. We don't have written documentation as  
24 to what the number was on the line limit. We just

49 (Pages 190 to 193)

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 194</p> <p>1 know that it was extant.</p> <p>2 Q. Do you know -- I'm sorry. Go ahead.</p> <p>3 A. That's it.</p> <p>4 Q. Do you know what time period the line --</p> <p>5 I'm just going to call it line limits -- the line</p> <p>6 limits policy was in place?</p> <p>7 A. The interviews in which I conducted,</p> <p>8 they thought that they had always been in place but</p> <p>9 they could not quantify what items at what time</p> <p>10 were subject to those line limits.</p> <p>11 There are some later documents in 2012 I</p> <p>12 think as part of that presentation to the DEA and</p> <p>13 another internal document shortly thereafter that</p> <p>14 details the products that were subject to line</p> <p>15 limits, but we have been unable to determine what</p> <p>16 the number was on the line limit.</p> <p>17 Q. Okay. So let me make sure, going back</p> <p>18 to our chart, I'm going to put "Line Limits" under</p> <p>19 the "Criteria." Does that make sense?</p> <p>20 A. Correct.</p> <p>21 Q. And under the "Date," I'm going to put a</p> <p>22 question mark because we're not sure, right?</p> <p>23 A. 2000 forward, but we're not sure what.</p> <p>24 Q. Did you say "2000 forward"?</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Correct.</p> <p>2 Q. So, again, not entirely sure what</p> <p>3 certain drugs were at any one point in time and</p> <p>4 what the criteria was?</p> <p>5 A. We're not able to establish what those</p> <p>6 were with documentation.</p> <p>7 Q. Okay. So, when those orders were</p> <p>8 flagged, were they suspicious?</p> <p>9 A. They could also be suspicious.</p> <p>10 Q. Okay. So, possibly suspicious like the</p> <p>11 others and the answer is yes, then?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. The due diligence, is there any</p> <p>14 mechanism to perform due diligence on an order that</p> <p>15 tripped the line limits?</p> <p>16 A. There likely -- they would likely also</p> <p>17 appear on the excessive quantity query. The</p> <p>18 difference here is that it would not allow,</p> <p>19 regardless of an override -- so, even if the DC</p> <p>20 staff investigated and found it not to be</p> <p>21 suspicious, it's still -- they could still not</p> <p>22 exceed the line limit in how much product was</p> <p>23 shipped.</p> <p>24 Q. If I put in "Due Diligence" to say a</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yeah.</p> <p>2 Q. But not sure. I'm going to put a</p> <p>3 question mark. Is that fair?</p> <p>4 A. Fair.</p> <p>5 Q. Okay. And under the "Criteria" I'm</p> <p>6 going to put a question mark because we're not</p> <p>7 sure?</p> <p>8 A. Criteria were certain drugs, products.</p> <p>9 Q. Okay.</p> <p>10 A. What those were at what time, we don't</p> <p>11 know.</p> <p>12 Q. Okay. So, kind of like the greater than</p> <p>13 X. We know that somebody's told you that line</p> <p>14 items -- I'm sorry -- line limits were certain</p> <p>15 drugs, but we don't know which ones, right?</p> <p>16 A. We -- we have in later documents a list</p> <p>17 of chemicals, a list of products that were included</p> <p>18 in the line limits.</p> <p>19 Q. List of products?</p> <p>20 A. Um-hmm.</p> <p>21 Q. Does that include opiates?</p> <p>22 A. Correct.</p> <p>23 Q. "List of products, chemicals but later."</p> <p>24 Is that later date?</p>	<p style="text-align: right;">Page 197</p> <p>1 "Hard Stop," is that accurate?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So, I'm going to put "Hard Stop"</p> <p>4 and then "/no" on the "Due Diligence." Is that</p> <p>5 fair?</p> <p>6 A. Again, I think there would be overlap</p> <p>7 with excessive quantity query on these. Also, if</p> <p>8 the quantity exceeded the line limit, it wouldn't</p> <p>9 be shipped at all.</p> <p>10 Q. I'll just leave the "Hard Stop."</p> <p>11 So, continuing under "Policies and</p> <p>12 Procedures Written," that's no, right?</p> <p>13 A. No.</p> <p>14 Q. And then "Policy and Procedures Verbal,"</p> <p>15 it's yes but with uncertainty. Is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. And we already answered the no due</p> <p>18 diligence. I'm just going to call that a hard</p> <p>19 stop.</p> <p>20 And they weren't shipped if they</p> <p>21 exceeded the line limit, right?</p> <p>22 A. That's my understanding, yes.</p> <p>23 Q. So, what department within Walgreens was</p> <p>24 responsible for identifying what that hard stop</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 198</p> <p>1 number was?</p> <p>2 A. From my understanding, it was a</p> <p>3 collaboration between the logistics, DCs, and the</p> <p>4 inventory teams.</p> <p>5 Q. Okay. So, those are three separate</p> <p>6 departments?</p> <p>7 A. Well, DCs are part of logistics.</p> <p>8 Q. What people specifically did you talk to</p> <p>9 that tried to help you understand what the line</p> <p>10 limits were?</p> <p>11 A. The DC staff, when I talked to them, I</p> <p>12 recall them talking about line limits.</p> <p>13 Q. Okay. Who is that?</p> <p>14 A. Justin Joseph and for sure. I think</p> <p>15 Steve Kneller also.</p> <p>16 Q. Okay. They are both DC staff?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 A. I believe Bamberg, Steve Bamberg,</p> <p>20 mentioned line limits as well.</p> <p>21 Q. All right.</p> <p>22 A. As Denny Murray and Barb Martin.</p> <p>23 Q. Is Steve Bamberg a DC staff?</p> <p>24 A. No. He is a systems developer, but he</p>	<p style="text-align: right;">Page 200</p> <p>1 recalls what the hard stop was, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Do you think that that answer --</p> <p>4 and I'm sorry that you're getting put in this</p> <p>5 position, but you're only as good as the</p> <p>6 information you get, right?</p> <p>7 A. Um-hmm.</p> <p>8 Q. And you're charged sitting here today as</p> <p>9 getting up to speed, as we went through earlier,</p> <p>10 duty to prepare to talk about the different</p> <p>11 policies and procedures and formulas for suspicious</p> <p>12 order monitoring.</p> <p>13 But everything we've gone through so</p> <p>14 far, there's been virtually nothing in writing on a</p> <p>15 policy and procedure evidencing what the criteria</p> <p>16 was. Is that fair?</p> <p>17 MR. BENSINGER: Objection; argument.</p> <p>18 BY THE WITNESS:</p> <p>19 A. The -- there's been limited policies and</p> <p>20 procedures. We have interviews and then also</p> <p>21 variety of e-mails or presentations that reference</p> <p>22 the line limits. But the -- it's a limited set of</p> <p>23 information.</p> <p>24 BY MR. MOUGEY:</p>
<p style="text-align: right;">Page 199</p> <p>1 had some awareness of line limits.</p> <p>2 Q. Okay.</p> <p>3 A. He wouldn't be responsible for</p> <p>4 determining them, as best I can determine.</p> <p>5 Q. I got lost there after Steve. So, I</p> <p>6 have Justin Joseph, Steve Kneller, Steve Bamberg</p> <p>7 and who else?</p> <p>8 A. Barb Martin.</p> <p>9 Q. And Barb Martin?</p> <p>10 A. And Denny Murray.</p> <p>11 Q. Okay. Is Denny Murray a DC staff?</p> <p>12 A. He is in our Rx inventory team.</p> <p>13 Q. Okay. And one more time I'm missing</p> <p>14 one.</p> <p>15 A. Barb Martin.</p> <p>16 Q. That's right.</p> <p>17 A. Also Rx inventory.</p> <p>18 Q. But she works out of the DC offices?</p> <p>19 A. No. What I'm saying is the DCs and</p> <p>20 inventory would work together to set the line</p> <p>21 limits is what I've understood from the interviews.</p> <p>22 Q. So, you talked to four people about line</p> <p>23 limits and no one recalls any policy or procedure,</p> <p>24 no one recalls the specific line item and no one</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. What we have gone through so far, do you</p> <p>2 agree that Walgreens' suspicious order monitoring</p> <p>3 program, policies and procedures was a Byzantine</p> <p>4 maze of patchwork of pieces put together?</p> <p>5 MR. BENSINGER: Special Master, I object that</p> <p>6 this is argument and now asking for a personal</p> <p>7 opinion, not asking for a corporate designee.</p> <p>8 SPECIAL MASTER COHEN: Sustained.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. Who was in charge of, and I apologize if</p> <p>11 I already asked this, who was in charge of</p> <p>12 implementing or looking at the line limit reports</p> <p>13 on a daily basis?</p> <p>14 A. I don't know that they -- it wasn't a</p> <p>15 report so much as it was a threshold in the system</p> <p>16 that could not be exceeded. So, I don't know that</p> <p>17 anyone was reviewing the threshold on a daily</p> <p>18 basis.</p> <p>19 Q. So, if an order exceeded the threshold</p> <p>20 and wasn't filled, no one pointed you to any</p> <p>21 automation or notification for any specific</p> <p>22 individual that warranted to go take a closer look?</p> <p>23 A. No.</p> <p>24 Q. Would you agree that an order that</p>

## Highly Confidential - Subject to Further Confidentiality Review

Page 202	Page 204
<p>1 tripped the line limit was suspicious?</p> <p>2 A. It was -- it would be possibly</p> <p>3 suspicious.</p> <p>4 Q. But no one did any follow-up to see why</p> <p>5 it was tripped?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. All right. So, now after the line</p> <p>8 limits, what other policies were in place that</p> <p>9 Walgreen used to fulfill its obligations as a</p> <p>10 distributor under the Controlled Substance Act?</p> <p>11 A. Sure. Let me switch to my other binder</p> <p>12 here.</p> <p>13 So, the next, if we're going in time</p> <p>14 order, we began development and then deployment of</p> <p>15 phase 1 in 2009.</p> <p>16 Q. All right. So, 2009. And that was an</p> <p>17 algorithm written by Wayne Bancroft, correct?</p> <p>18 A. Correct.</p> <p>19 Q. And that algorithm is memorialized in a</p> <p>20 memorandum, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And that's part of your -- bear with me.</p> <p>23 I think the first manual -- I'm sorry --</p> <p>24 memo that memorialized Mr. Bancroft's memo was</p>	<p>1 2008, correct?</p> <p>2 A. Correct.</p> <p>3 Q. "The DEA is requiring Walgreens to</p> <p>4 monitor the orders for control substances that our</p> <p>5 stores place on our distribution centers for</p> <p>6 suspicious activity."</p> <p>7 Do you see that in the first sentence?</p> <p>8 A. I do.</p> <p>9 Q. "Suspicious orders are defined in terms</p> <p>10 of order size and order frequency. This document</p> <p>11 proposes a methodology for identifying suspicious</p> <p>12 orders in terms of order size and order frequency."</p> <p>13 Do you see that, sir?</p> <p>14 A. I do.</p> <p>15 Q. Okay. So, there wasn't anything that</p> <p>16 had changed in June of 2008 that warranted that</p> <p>17 Walgreens was now all of a sudden responsible for</p> <p>18 identifying suspicious orders, correct, sir?</p> <p>19 A. In the conversations that I had with --</p> <p>20 with the folks that I interviewed, their consensus</p> <p>21 was there was a shift in the industry and in the</p> <p>22 DEA's enforcement posture, and this led us to look</p> <p>23 for additional ways to try to get our hands around</p> <p>24 the suspicious order question.</p>
Page 203	Page 205
<p>1 2008, correct?</p> <p>2 A. I believe so, yes.</p> <p>3 MR. MOUGEY: Alex, can I get 1757.</p> <p>4 I hand you what we're going to mark as</p> <p>5 Bancroft (sic) 30(b)(6) 22.</p> <p>6 (WHEREUPON, a certain document was</p> <p>7 marked as Bratton 30(b)(6) Exhibit</p> <p>8 No. 22: 6/23/08 memo;</p> <p>9 WAGMDL00624503 - 00624509.)</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. June 23, 2008, correct, sir?</p> <p>12 A. Correct.</p> <p>13 Q. Written by Wayne Bancroft and Tracy</p> <p>14 Morris, correct?</p> <p>15 A. Correct.</p> <p>16 Q. And to multiple other Walgreens</p> <p>17 employees, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The deliverable is "Proposal for</p> <p>20 defining 'suspicious orders' in the Walgreen</p> <p>21 distribution system," correct?</p> <p>22 A. Correct.</p> <p>23 Q. And the regarding, "DEA suspicious order</p> <p>24 reporting," as I already mentioned, dated June 23,</p>	<p>1 Q. But as we go back, and we don't</p> <p>2 need this, the chart you and I have been putting</p> <p>3 together, the earliest date you and I have</p> <p>4 identified is '98.</p> <p>5 So, Walgreens was aware that it was</p> <p>6 responsible for designing a system to identify</p> <p>7 suspicious orders going all the way back to '98,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Yes, sir. So, the memo coming out in</p> <p>11 2008, there was no sea change and all of a sudden</p> <p>12 there was a new responsibility for Walgreens,</p> <p>13 correct, sir?</p> <p>14 A. I don't believe that it was a new</p> <p>15 responsibility, no.</p> <p>16 Q. So, this methodology written by</p> <p>17 Mr. Wayne Bancroft and Ms. Tracy Morris, they were</p> <p>18 charged with designing a new methodology within</p> <p>19 Walgreens to identify suspicious orders, correct,</p> <p>20 sir?</p> <p>21 A. Correct.</p> <p>22 Q. And, so, would you please explain to me</p> <p>23 what your understanding, what's -- of what that</p> <p>24 methodology was in 2008?</p>

Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 206</p> <p>1 A. So, I think, you know, based off of</p> <p>2 interviews and with these folks that were involved,</p> <p>3 there were concerns from the DEA that the previous</p> <p>4 E-3 reports were overinclusive, and we sought to</p> <p>5 clarify that, but in the absence of any clarity, we</p> <p>6 proceeded with this plan of action.</p> <p>7 So, I'm not a Ph.D. in math like Wayne</p> <p>8 is, but my understanding is that if it would look</p> <p>9 back at the quantities that's normally ordered by a</p> <p>10 store and it would use math to determine if that</p> <p>11 quantity was irregular and if it was irregular, it</p> <p>12 would -- it would flag it as potentially suspicious.</p>	<p style="text-align: right;">Page 208</p> <p>1 testing the system and refining the characteristics</p> <p>2 of what might be identified.</p> <p>3 Then in phase 2 --</p> <p>4 Q. Can I stop you there? I apologize for</p> <p>5 interrupting.</p> <p>6 But when you said that phase 1 was a</p> <p>7 test and during that proof of concept phase we were</p> <p>8 evaluating the orders to see if they would really</p> <p>9 pass muster.</p> <p>10 So, what I want to know is when did</p> <p>11 phase 1 go into place based on the final algorithm</p> <p>12 from Mr. Bancroft?</p> <p>13 A. So, phase 1 was producing reports in</p> <p>14 August of '09.</p> <p>15 Q. Okay. Now, when I say "producing</p> <p>16 reports," are you saying in a pilot concept or it</p> <p>17 was implemented across all of the stores?</p> <p>18 A. Pilot concept.</p> <p>19 Q. Pilot concept. But what I'm looking for</p> <p>20 is when was it implemented across Walgreens in its</p> <p>21 final form?</p> <p>22 A. Well, the phase 2, which is based off of</p> <p>23 this initial algorithm, after they tested it in the</p> <p>24 proof of concept, it went live in September of 2010.</p>
<p style="text-align: center;"><b>REDACTED</b></p> <p>19 Q. So, Mr. -- the system that Mr. Bancroft</p> <p>20 was discussing in this memorandum dated June 23,</p> <p>21 2008 was designed to identify outliers outside the</p> <p>22 average of a certain store, correct?</p> <p>23 MR. BENSINGER: Objection; characterization.</p> <p>24 BY THE WITNESS:</p>	
<p style="text-align: right;">Page 207</p> <p>1 A. I'm not sure if it was on a</p> <p>2 store-by-store basis or not or if it was compared</p> <p>3 to all orders of that size.</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. You just explain to me what you think</p> <p>6 Mr. Bancroft -- and I understand that it's an</p> <p>7 algorithm that is -- has a lot of Greek symbols in</p> <p>8 it.</p> <p>9 So, why don't you just tell me in your</p> <p>10 own plain English what you think Walgreens' system</p> <p>11 that it was discussing in June of 2008 to identify</p> <p>12 suspicious orders?</p> <p>13 A. I think it would try to identify</p> <p>14 quantities or frequencies outside of a normal</p> <p>15 pattern and then flag those as potentially</p> <p>16 suspicious.</p> <p>17 Q. And then what would happen once they</p> <p>18 were flagged as potentially suspicious?</p> <p>19 A. Well, phase 1 starting in '09 was a test</p> <p>20 and during that proof of concept phase, we were</p> <p>21 evaluating the flagged orders to see if they really</p> <p>22 met muster, if you will, and were something that we</p> <p>23 would consider suspicious.</p> <p>24 So, for about ten months, they were</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. So I'm back to our chart. I've</p> <p>2 now created a second page here because we ran out</p> <p>3 of room on the first one.</p> <p>4 So, phase 1 was not operational across</p> <p>5 Walgreens. Is that right?</p> <p>6 A. No.</p> <p>7 Q. I'm sorry. Am I right that it wasn't</p> <p>8 operational across Walgreens?</p> <p>9 A. Correct. It was only a proof of</p> <p>10 concept.</p> <p>11 Q. So, if I write "Phase 1 - not</p> <p>12 operational," I'm going to just write "Proof of</p> <p>13 concept." Is that fair?</p> <p>14 A. That's fair.</p> <p>15 Q. Okay. And you and I know from looking</p> <p>16 at this memo that about June 2008 is when that -- I</p> <p>17 won't say started because you clearly had done some</p> <p>18 work, but at least memorialized. How's that?</p> <p>19 Okay. So, to keep it general, should I</p> <p>20 say 2008 to 2000 and -- phase 2 was implemented in</p> <p>21 2010 you said, right?</p> <p>22 A. Correct.</p> <p>23 Q. So, can I put 2008 to 2010 under</p> <p>24 phase 1?</p>

53 (Pages 206 to 209)



## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 210</p> <p>1 A. Yes.</p> <p>2 Q. Is that fair?</p> <p>3 A. Fair.</p> <p>4 Q. Okay. So, "2008 to 2010, phase 1 - not</p> <p>5 operational, proof of concept."</p> <p>6 Does that sound right?</p> <p>7 A. Correct.</p> <p>8 Q. Okay. So, what do you refer to or what</p> <p>9 does Walgreens refer to as Mr. Bancroft's algorithm</p> <p>10 in phase 1? What was the --</p> <p>11 A. The tolerance and frequency limits.</p> <p>12 Q. Okay. So, I'm going to under "Criteria"</p> <p>13 put "Tolerance and Frequency," and I am going to</p> <p>14 reference this Bates number, 24503, as a reference.</p> <p>15 Is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. Is this memo a good memorialization of</p> <p>18 that phase 1?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So, phase 1, 24503. I'm going to</p> <p>21 put a 6 in front of it. "624503, Tolerance and</p> <p>22 Frequency," and that was on a pilot basis, correct?</p> <p>23 A. Correct.</p> <p>24 Q. So, let's talk about the pilot stores</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. So, was it operational in the pilot</p> <p>2 stores?</p> <p>3 A. It was only collecting data, from my</p> <p>4 understanding.</p> <p>5 Q. Okay. It was a beta test. How's that?</p> <p>6 Is that fair?</p> <p>7 A. That's fair.</p> <p>8 Q. So, it wasn't implemented in those pilot</p> <p>9 stores. It was beta testing to see what the</p> <p>10 results were for accuracy and making sure</p> <p>11 everything was running smoothly?</p> <p>12 A. Correct.</p> <p>13 Q. And that continued from '08 until 2010</p> <p>14 when phase 2 was implemented, is that -- is that</p> <p>15 accurate?</p> <p>16 A. When phase -- phase 2 was deployed, yes.</p> <p>17 Q. Okay. And do you have an understanding</p> <p>18 of when phase 2 was deployed?</p> <p>19 A. September 2010.</p> <p>20 Q. September 2010?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And please explain what</p> <p>23 phase 2 is. Is it the same methodology with the</p> <p>24 tolerance and frequency that we just discussed in</p>
<p style="text-align: right;">Page 211</p> <p>1 for a minute. I get some of these mixed up a</p> <p>2 little bit. Is that Nevada, Tennessee? Tell me</p> <p>3 where the pilots were. Do you remember?</p> <p>4 A. I believe some were in Nevada. I'm</p> <p>5 not -- I don't know -- I don't recall them</p> <p>6 mentioning Tennessee.</p> <p>7 Q. Okay. And when we say "pilots," were --</p> <p>8 was the formula being run and was a report being</p> <p>9 generated that suspicious orders were -- were going</p> <p>10 to certain individuals within Walgreens?</p> <p>11 A. So, during that time, Barb Martin and</p> <p>12 Marcy Ranick would review monthly data from the --</p> <p>13 the stores, and there's some discussions that I've</p> <p>14 had with Barb and also e-mails and notes that I've</p> <p>15 seen where they would evaluate is this potentially</p> <p>16 suspicious or not and, for instance, there's</p> <p>17 examples where there is things that shouldn't have</p> <p>18 been flagged or may have -- the system was</p> <p>19 interpreting actions by the store incorrectly and</p> <p>20 so those shouldn't be included in the flagging.</p> <p>21 Q. So, Bob and -- I'm sorry.</p> <p>22 Barb Martin and Marcy Ranick were kind</p> <p>23 of looking at the reports generated as a pilot?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 213</p> <p>1 phase 1?</p> <p>2 A. So, they made some changes --</p> <p>3 Q. Okay.</p> <p>4 A. -- is what I was told and updated the</p> <p>5 way the system was functioning and then --</p> <p>6 Q. Okay.</p> <p>7 A. -- once those changes were incorporated,</p> <p>8 it was deployed in September of 2010, and at that</p> <p>9 time it would automatically reduce orders that</p> <p>10 exceeded the tolerance threshold.</p> <p>11 Q. Okay. So, "Possible Suspicious Orders"</p> <p>12 would be a yes, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, let me go back. I should</p> <p>15 have filled out the rest of these.</p> <p>16 I'm just going to put "Beta" across all</p> <p>17 these columns at the top. Is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, let me make sure I got this</p> <p>20 right.</p> <p>21 So, Mr. Bancroft's formula would run</p> <p>22 through the system across the country and if an</p> <p>23 order exceeded frequency or tolerance, the order</p> <p>24 was reduced, correct?</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 214</p> <p>1 A. Correct.</p> <p>2 Q. And if the order triggered frequency or</p> <p>3 tolerance, was a suspicious report generated?</p> <p>4 A. No.</p> <p>5 Q. Okay. So, you'd agree with me that</p> <p>6 triggering frequency or tolerance, that that would</p> <p>7 possibly be a suspicious order, correct?</p> <p>8 A. Possibly. However, it would be reduced</p> <p>9 before it was ever transmitted to the DC.</p> <p>10 Q. All right. So, under "Possibly</p> <p>11 Suspicious Orders," I'm going to put "Yes but</p> <p>12 reduced." Is that fair? Is that accurate?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. The criteria under deployed in</p> <p>15 9/10 in phase 2 was kind of the same thing I put in</p> <p>16 this first column, "Some changes and updates,"</p> <p>17 right?</p> <p>18 A. Updated tolerance and frequency, yes.</p> <p>19 Q. All right. I'm going to put "Some</p> <p>20 changes/updates to phase 1."</p> <p>21 Do you know what those were, what the</p> <p>22 changes and updates were?</p> <p>23 A. They are design documents. I'm not sure</p> <p>24 if they call out specifically like in a -- like</p>	<p style="text-align: right;">Page 216</p> <p>1 A. The -- yes, and the design documents</p> <p>2 that specify what the system shall do and how that</p> <p>3 will be accomplished.</p> <p>4 Q. So, as part of your preparation for</p> <p>5 today, no one's helped educate you on the</p> <p>6 differences between phase 1 and phase 2 in kind of</p> <p>7 a list of what the differences are, right?</p> <p>8 A. Not at that level of specificity.</p> <p>9 Q. Quite frankly, really, can you give me</p> <p>10 any direction as to what the differences between</p> <p>11 phase 1 and phase 2 are other than just pointing me</p> <p>12 to the numerous business requirements documents</p> <p>13 generated internally?</p> <p>14 A. I think there were some adjustments to</p> <p>15 Steve or -- excuse me -- Wayne's formula. I don't</p> <p>16 fully understand how that -- those work.</p> <p>17 As I said, I think they added</p> <p>18 additional. So, when it was flagged, it would have</p> <p>19 a sort of a disposition as to why. And they added</p> <p>20 additional criteria or dispositions.</p> <p>21 And then there were times when it was --</p> <p>22 we looked at examples where it was the store</p> <p>23 changed the order, but they may have actually</p> <p>24 changed it to be less or in a way that was</p>
<p style="text-align: right;">Page 215</p> <p>1 before and after kind of format. But I think they</p> <p>2 detail what was implemented.</p> <p>3 Q. Do you believe that there is specific</p> <p>4 documents that identify what the changes and</p> <p>5 updates were from phase 1 to phase 2?</p> <p>6 A. There's the design docs, but you'd have</p> <p>7 to compare the version 1 and version 2 design doc</p> <p>8 and draw out the differences. There was also some</p> <p>9 e-mails from Marcy and Barb that said, you know,</p> <p>10 this shouldn't be flagged or we need a new</p> <p>11 category. This is incorrectly --</p> <p>12 Q. Sitting here --</p> <p>13 A. -- being positioned.</p> <p>14 Q. Sorry. Didn't meant to interrupt you.</p> <p>15 But sitting here today you can't tell</p> <p>16 this jury with specificity what the difference is</p> <p>17 between phase 1 and phase 2 of Walgreens'</p> <p>18 suspicious order monitoring policies, can you?</p> <p>19 A. I think we would have to do a review of</p> <p>20 the business requirements for each phase and then</p> <p>21 produce a deliverable, yeah, that would.</p> <p>22 Q. When you say "business requirements,"</p> <p>23 you're referring to the internal memorandum</p> <p>24 generated on an ongoing basis updating, correct?</p>	<p style="text-align: right;">Page 217</p> <p>1 acceptable, but those were getting flagged because</p> <p>2 it was touched at all by the store, which was not</p> <p>3 appropriate based -- not an appropriate criteria to</p> <p>4 mark it as suspicious, only that it was touched.</p> <p>5 Q. So, sir, sitting here today with Bratton</p> <p>6 Exhibit 2, the First Notice of Deposition pursuant</p> <p>7 to 30(b)(6), you can't explain to the jury what</p> <p>8 Walgreens' standards and metrics were as elaborated</p> <p>9 in Mr. Bancroft's memo with any -- with any</p> <p>10 specificity other than what you just gave, correct?</p> <p>11 A. Correct.</p> <p>12 Q. So, how the formula worked, what the</p> <p>13 formula was, what data it pulled, those aren't --</p> <p>14 that's not information you have in response to (i)</p> <p>15 today?</p> <p>16 A. Those are contained in the documents.</p> <p>17 Q. Yes, sir. I'd have go back and kind of</p> <p>18 compare all the different business requirements</p> <p>19 documents and see if I can discern what the</p> <p>20 differences were, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Can you actually point me to a document</p> <p>23 that says this is phase 2, this is it?</p> <p>24 A. So, there's a number of documents. The</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 218</p> <p>1 first one would be the design for phase 2.</p> <p>2 Q. Before I interrupt, I just want to make</p> <p>3 sure before you keep going. What I'm looking for</p> <p>4 is a final, final document with a final algorithm.</p> <p>5 Can you -- not a series of documents with updates.</p> <p>6 Can you point me to a final document</p> <p>7 with a final algorithm formula?</p> <p>8 A. I believe that the micro design for</p> <p>9 phase 2, and that's Bates No. 492076, outlines the</p> <p>10 final formula for the system. And there is an</p> <p>11 attachment to that report that has a separate -- I</p> <p>12 thought there was.</p> <p>13 Q. What concerns me a little bit about your</p> <p>14 answer is you said "I believe." Is it? Is 492076</p> <p>15 the final version of phase 2?</p> <p>16 A. I believe so, yes. This is what they</p> <p>17 would have built and implemented.</p> <p>18 Q. Okay. You just use the word "I believe"</p> <p>19 again. Is that a caveat or are you saying that</p> <p>20 is -- that is or you're not really sure?</p> <p>21 A. The challenge with any of our IT</p> <p>22 projects is they would begin with this design doc</p> <p>23 and as they deployed the software, if there were</p> <p>24 defects or bugs that were identified as part of</p>	<p style="text-align: right;">Page 220</p> <p>1 something was changed.</p> <p>2 Q. Okay. You would agree with me, sir,</p> <p>3 that under (i), one of the questions we had today</p> <p>4 that Walgreens was to prepare you on was the</p> <p>5 metrics used to identify orders of unusual size,</p> <p>6 orders deviating substantially from a normal</p> <p>7 pattern and orders of unusual frequency, right?</p> <p>8 A. Yes.</p> <p>9 Q. And what we're discussing would fall</p> <p>10 under (i), correct?</p> <p>11 A. Correct.</p> <p>12 Q. And, so, even sitting here after now</p> <p>13 years later, months into this litigation, Walgreens</p> <p>14 isn't able to tell us what the exact algorithm was</p> <p>15 in 2009 that was deployed, correct?</p> <p>16 A. I reasonably believe, I feel, that this</p> <p>17 was what was deployed but I can't --</p> <p>18 Q. You can't say for sure?</p> <p>19 A. I can't say with 100 percent certainty.</p> <p>20 Q. Okay. Now, orders that were cut down</p> <p>21 were based on this tolerance and frequency. Were</p> <p>22 there -- was there due diligence performed on the</p> <p>23 order as it was submitted?</p> <p>24 A. Other than the previously discussed</p>
<p style="text-align: right;">Page 219</p> <p>1 the -- so, any time we go through the business</p> <p>2 requirements, functional requirements, macro</p> <p>3 design, micro design, build, test, and then pilot.</p> <p>4 Q. Right.</p> <p>5 A. As part of the pilot, it's a limited</p> <p>6 distribution smaller number of stores.</p> <p>7 Q. Get it.</p> <p>8 A. As part of that pilot, they may identify</p> <p>9 defects in the product.</p> <p>10 Q. Okay.</p> <p>11 A. I -- we were unable to determine if</p> <p>12 there were any of those documents that outlined any</p> <p>13 defects --</p> <p>14 Q. Okay.</p> <p>15 A. -- that were -- would have -- might have</p> <p>16 precipitated a change during the pilot phase.</p> <p>17 Q. So, the answer to my question is we're</p> <p>18 not really sure what the exact final formula or</p> <p>19 algorithm was that was actually deployed after the</p> <p>20 macro, micro, pilot, you know, any tweaks or</p> <p>21 changes right when it was deployed, right?</p> <p>22 A. I have no evidence that would lead me to</p> <p>23 believe it wasn't what's in the micro design, but</p> <p>24 I'm also not ruling out there is a possibility that</p>	<p style="text-align: right;">Page 221</p> <p>1 diligence, no.</p> <p>2 Q. So, there's no one at Walgreens that's</p> <p>3 receiving these reports or the results of the phase</p> <p>4 2 algorithm and performing due diligence on any of</p> <p>5 these?</p> <p>6 A. Well, the orders after they were cut</p> <p>7 would be released to the DC and the DC would --</p> <p>8 would perform their diligence, but I know that Barb</p> <p>9 and Marcy were still looking at these periodically</p> <p>10 as well.</p> <p>11 Q. The orders that were -- that triggered</p> <p>12 the formula for tolerance and frequency and were</p> <p>13 cut, were those reported to the DEA as suspicious?</p> <p>14 A. They would not have been included in</p> <p>15 the -- the Appendix 3-E report.</p> <p>16 Q. Or any report for that matter?</p> <p>17 A. Not based on the -- they might have been</p> <p>18 in there, but they weren't included based on their</p> <p>19 being flagged in this process.</p> <p>20 Q. There was no report for suspicious</p> <p>21 orders being sent to the DEA as a result of orders</p> <p>22 being cut based on tolerance and frequency, right?</p> <p>23 A. Not at this time, no.</p> <p>24 Q. Okay. So, "Possible Suspicious Order"</p>



## Highly Confidential - Subject to Further Confidentiality Review

Page 222	Page 224
<p>1 column, back to the chart, "Yes, but reduced. No 2 SOR," suspicious order reports, "to DEA," I'm going 3 to say, "based on phase 2." Is that fair? 4 A. Yes. 5 Q. And based on phase 2, order getting cut, 6 there was no due diligence on why the order 7 exceeded the tolerance and frequency either, 8 correct? 9 A. Not based only on phase 2, correct. 10 Q. Okay. So, I said below that, "No on 11 phase 2." Is that -- that's accurate, right? 12 A. Other than the other diligence, no. 13 Q. Yes, sir. So, I think it's safe to 14 assume and there is not any policies and procedures 15 written on what due diligence to perform based on 16 the orders that were cut, right? 17 A. Correct. 18 Q. So, I'm going to put "Not on due 19 diligence for orders that were cut." Is that fair? 20 A. Yes. 21 Q. Okay. 22 A. There was retrospective analysis, but 23 not -- 24 Q. Before they were shipped?</p>	<p>1 September '10 to May of '12 for phase 2, is that 2 right? 3 A. Correct. 4 Q. Okay. So, phase 3 is June of '12, 5 right? 6 A. Correct. 7 Q. So, do you have an understanding -- 8 actually, before we get into that, let me make sure 9 that you and I are clear on something. 10 When an order triggered the tolerance 11 and frequency under phase 2 and it was cut, let me 12 make sure you and I are saying the same thing, cut 13 meaning that the order was reduced to the amount 14 set internally by Walgreens. Is that fair? 15 A. Based on the algorithm developed by 16 Wayne. 17 Q. Okay. And, so, therefore, the order was 18 not sent from the distribution center? 19 A. It was reduced and fulfilled. 20 Q. Reduced and fulfilled. Okay. Fulfilled 21 meaning the order was reduced to the amount that 22 Walgreens said it was okay and then it was 23 fulfilled, correct? 24 A. Correct.</p>
Page 223	Page 225
<p>1 A. Correct. 2 Q. And the retrospective analysis was what? 3 A. The LP, Marcy Ranick and Barb Martin 4 would review a sample of these and review the 5 appropriateness of the orders. 6 Q. All right. So, how do you know that? 7 A. Based on discussions with them and 8 e-mails that I've seen where they discuss. 9 Q. So, no -- no written policies or 10 procedures on what that due diligence was? 11 A. No. 12 Q. Okay. So, I'm going to say "Policy and 13 Procedures on Due Diligence," I'm going to say, 14 "Nothing in writing other than e-mails and verbal 15 or interviews." Is that fair? 16 A. Correct. 17 Q. All right. So, phase 2. How long was 18 phase 2 in play? 19 A. Let me switch back to my reference 20 material here. 21 Q. Are you looking for an end to phase 2? 22 A. Yes. So, phase 3 was deployed in 23 June of 2012. 24 Q. Okay. So, I'm going to say</p>	<p>1 Q. Okay. Now, phase 3. Was that process 2 still in place in phase 3? 3 A. Correct. 4 Q. Reduced and fulfilled? 5 A. Correct. 6 Q. Okay. So, how long was phase 3 in play? 7 A. Phase 3 was from June of '12 to 8 August of '12. 9 Q. And what was different between phase 2 10 and phase 3? 11 A. Further refinement of the math. 12 Q. Okay. So, what specifically? 13 A. Let me take a look. 14 So, the frequency calculation was 15 updated and they specified in this -- this is -- 16 I'm looking at the functional macro design 17 documents. Do you need a Bates? 18 Q. That would be wonderful. Thank you. 19 A. 325172. And this contains details on 20 how the frequency calculation was changed. 21 Q. All right. Are you comfortable that 22 that is 325172 is the final? 23 A. Yes. 24 Q. Okay. So, what is your understanding</p>

## Highly Confidential - Subject to Further Confidentiality Review

Page 226	Page 228
<p>1 generally about what the changes in the algorithm</p> <p>2 were as elaborated on on 325172?</p> <p>3 A. One moment.</p> <p>4 It says here that they were including</p> <p>5 vendor orders in frequency. So, previously we had</p> <p>6 only considered orders from our own distribution</p> <p>7 centers.</p> <p>8 Q. So, included under the "Criteria," I'm</p> <p>9 going to put "Included vendor orders"?</p> <p>10 A. For consideration in frequency.</p> <p>11 Q. Just frequency?</p> <p>12 A. Correct.</p> <p>13 And then they corrected an order -- an</p> <p>14 issue in which an incorrectly adjusted quantity or</p> <p>15 user adjusted quantity would -- it appears they</p> <p>16 would appear incorrectly in the system. So, they</p> <p>17 were fixing a bug.</p> <p>18 Q. Okay. And the bug was regarding?</p> <p>19 A. The order details.</p> <p>20 Q. Okay. All right. So, under "Criteria"</p> <p>21 I put, "Same as 2 but included vendor orders for</p> <p>22 consideration in just frequency and fixed a bug for</p> <p>23 order details." Is that right?</p> <p>24 A. Correct.</p>	<p>1 A. Correct.</p> <p>2 Q. Over these next few pages has a very</p> <p>3 intricate algorithm, was designed to identify</p> <p>4 orders that were outliers, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And when it found those orders that were</p> <p>7 outliers, he refers to those orders throughout his</p> <p>8 memo as suspicious orders, correct?</p> <p>9 A. He does.</p> <p>10 Q. And, so, in June of 2008, those outlier</p> <p>11 orders from the gentleman, the Ph.D. in math that</p> <p>12 wrote this algorithm, said those are suspicious</p> <p>13 orders, correct?</p> <p>14 A. He did. However, Wayne being a smart</p> <p>15 guy but is not a lawyer and I don't think this</p> <p>16 represents our legal position on what these -- this</p> <p>17 algorithm did.</p> <p>18 Q. And the legal position is that if the</p> <p>19 suspicious orders reduced, it just magically is no</p> <p>20 longer suspicious?</p> <p>21 MR. BENSINGER: Objection; beyond the scope,</p> <p>22 calling for a legal opinion and interpretation.</p> <p>23 SPECIAL MASTER COHEN: Sustained.</p> <p>24 BY MR. MOUGEY:</p>
Page 227	Page 229
<p>1 Q. Okay. So, now, when an order was</p> <p>2 reduced and fulfilled, I believe you called it,</p> <p>3 under phase 2 and phase 3, were those orders</p> <p>4 identified as suspicious and sent to the DEA?</p> <p>5 A. No.</p> <p>6 Q. Did Walgreens not believe that the order</p> <p>7 that was reduced was a suspicious order?</p> <p>8 A. I believe that we believed that since it</p> <p>9 was reduced, it was no longer met the criteria for</p> <p>10 being suspicious.</p> <p>11 Q. So, it would just be reduced and then it</p> <p>12 was no longer suspicious?</p> <p>13 A. Correct.</p> <p>14 Q. Oh, okay. So, the order comes in,</p> <p>15 formula reduces it, and then Walgreens says it's</p> <p>16 not suspicious, right? Did I get that right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. But if I go back to Wayne</p> <p>19 Bancroft's memo, all the way back in June of 2008,</p> <p>20 which is Bratton 22, the proposal was to define</p> <p>21 suspicious orders, right?</p> <p>22 A. Correct.</p> <p>23 Q. And this entire proposal that Mr. Wayne</p> <p>24 Bancroft -- and you said he has a Ph.D. in math?</p>	<p>1 Q. Walgreens has to understand what the</p> <p>2 industry standards are when implementing its</p> <p>3 algorithm, correct?</p> <p>4 MR. BENSINGER: Objection; argument.</p> <p>5 BY THE WITNESS:</p> <p>6 A. We -- we were implementing this program</p> <p>7 for monitoring. We believed we were meeting the</p> <p>8 requirement via the Appendix E-3 reporting.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. If Walgreens thought it was meeting the</p> <p>11 requirement under E-3, it brought in Wayne to write</p> <p>12 a pretty sophisticated algorithm in 2008, right?</p> <p>13 A. Correct.</p> <p>14 Q. So, let's go back to understanding</p> <p>15 industry standards.</p> <p>16 Walgreens, in order to effectively</p> <p>17 implement its responsibilities as a distributor,</p> <p>18 needs to understand what the industry standards are</p> <p>19 for identifying suspicious order monitoring,</p> <p>20 correct?</p> <p>21 MR. BENSINGER: Objection; scope and again</p> <p>22 calls for opinion testimony beyond the designation</p> <p>23 of this corporate spokesperson.</p> <p>24 SPECIAL MASTER COHEN: Overruled.</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 230</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm sorry. Can you repeat the question.</p> <p>3 BY MR. MOUGEY:</p> <p>4 Q. Walgreens people have to understand what</p> <p>5 the industry standards are when implementing the</p> <p>6 suspicious order monitoring policies, correct?</p> <p>7 A. We were seeking to understand those. I</p> <p>8 believe that the challenge for us was that the</p> <p>9 other distributors could not fully elaborate on</p> <p>10 what they thought they needed to do and when we</p> <p>11 tried to seek clarity from the DEA, we did not</p> <p>12 receive additional guidance when our -- our legal</p> <p>13 team inquired with them.</p> <p>14 So, we were doing what we thought based</p> <p>15 off of feedback from other parties, things we had</p> <p>16 heard, would improve our system so that it would be</p> <p>17 more effective.</p> <p>18 Q. And when Mr. Bancroft, the Ph.D., sat</p> <p>19 down and wrote the algorithm with the input of</p> <p>20 people from Walgreens, you would expect that he</p> <p>21 went to other individuals to gather information to</p> <p>22 write the algorithm, right?</p> <p>23 MR. BENSINGER: Objection; calls for</p> <p>24 speculation, scope.</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. What department is James VanOverbake in?</p> <p>2 A. I don't know.</p> <p>3 Q. So, just the people that you know</p> <p>4 sitting here, we have IT, we have loss prevention,</p> <p>5 we have inventory management and we have</p> <p>6 legal/regulatory just on this memo, the ones that</p> <p>7 we could identify, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Mr. Bancroft took his work and brought</p> <p>10 it to multiple departments, correct?</p> <p>11 A. Correct.</p> <p>12 Q. And based on his input and his algorithm</p> <p>13 that he drafted, he believed that he was charged</p> <p>14 with identifying orders that were suspicious,</p> <p>15 correct?</p> <p>16 MR. BENSINGER: Objection; calls for</p> <p>17 speculation.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I can't tell you what Wayne believed.</p> <p>20 BY MR. MOUGEY:</p> <p>21 Q. I'm asking what does it say right in</p> <p>22 this deliverable, "Proposal for defining</p> <p>23 'suspicious orders,'" correct, sir?</p> <p>24 A. I see that it says that, yes.</p>
<p style="text-align: right;">Page 231</p> <p>1 BY THE WITNESS:</p> <p>2 A. I'm not sure what Wayne did to -- to</p> <p>3 write, author this other than what he's told me,</p> <p>4 which is he sat down and --</p> <p>5 BY MR. MOUGEY:</p> <p>6 Q. What department is Steve Bamberg in?</p> <p>7 A. IT.</p> <p>8 Q. What department is Ed Choroski in?</p> <p>9 A. I don't know.</p> <p>10 Q. What department is Rick Gates in?</p> <p>11 A. Pharmacy operations.</p> <p>12 Q. What department is Tim Gorman in?</p> <p>13 A. I don't know.</p> <p>14 Q. What department is Scott Jonkman in?</p> <p>15 A. Loss prevention.</p> <p>16 Q. What department is Brian Leander in,</p> <p>17 please?</p> <p>18 A. I don't know.</p> <p>19 Q. What department is Barb Martin in?</p> <p>20 A. Barb Martin is in inventory.</p> <p>21 Q. What department is Dwayne Piñon in?</p> <p>22 A. Legal, regulatory, law.</p> <p>23 Q. What department is Linda Rambo in?</p> <p>24 A. I don't recall.</p>	<p style="text-align: right;">Page 233</p> <p>1 Q. And what is Walgreens' position that an</p> <p>2 order that's identified by Mr. Bancroft's algorithm</p> <p>3 that is just reduced is no longer suspicious?</p> <p>4 Where did that come from?</p> <p>5 MR. BENSINGER: Objection to characterization.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I think that was a legal interpretation</p> <p>8 by our regulatory/law team.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. And who specifically?</p> <p>11 A. I don't know.</p> <p>12 Q. So, the regulatory/law team said that an</p> <p>13 order that is flagged as a result of this algorithm</p> <p>14 and is identified by Mr. Bancroft's own language as</p> <p>15 suspicious is no longer suspicious if we reduce it</p> <p>16 and don't fill, correct?</p> <p>17 MR. BENSINGER: Mr. Bratton, I instruct you</p> <p>18 not to answer the question on the ground that as</p> <p>19 phrased it seeks to elicit attorney-client</p> <p>20 communication.</p> <p>21 BY MR. MOUGEY:</p> <p>22 Q. Sir, isn't that actually -- what I'm</p> <p>23 asking you are the details of the metric of the</p> <p>24 suspicious order monitoring system. All right.</p>

## Highly Confidential - Subject to Further Confidentiality Review

Page 234	Page 236
<p>1 So, the metric that Mr. Bancroft used</p> <p>2 identified these orders as suspicious, correct,</p> <p>3 sir?</p> <p>4 A. Possibly suspicious.</p> <p>5 Q. It doesn't say "possibly" in the</p> <p>6 deliverable, does it, sir?</p> <p>7 A. They're in quotes. So, I don't know</p> <p>8 what that means.</p> <p>9 Q. So, you read in when it's in quotes to</p> <p>10 mean possibly?</p> <p>11 A. It's -- it's not definitively</p> <p>12 suspicious.</p> <p>13 Q. Do you see the second sentence</p> <p>14 underneath "Overview," "This document proposes a</p> <p>15 methodology for identifying suspicious orders"?</p> <p>16 A. Correct.</p> <p>17 Q. That's not in quotes, right?</p> <p>18 A. No.</p> <p>19 Q. So, Mr. Bancroft, based on his work,</p> <p>20 along with Tracy Morris, decides that an order that</p> <p>21 is flagged as a result of his algorithm is</p> <p>22 suspicious, correct?</p> <p>23 MR. BENSINGER: Objection; calls for</p> <p>24 speculation.</p>	<p>1 Q. The first part of the second sentence</p> <p>2 says "suspicious orders," correct?</p> <p>3 A. Correct.</p> <p>4 Q. The third sentence uses the language</p> <p>5 "suspicious orders," correct?</p> <p>6 A. Correct.</p> <p>7 Q. Sir, you don't see the words in any of</p> <p>8 that language "possible," "potential," "probable,"</p> <p>9 do you?</p> <p>10 A. No.</p> <p>11 Q. You don't see anywhere in this memo that</p> <p>12 talks about flagging orders that may or may not be</p> <p>13 suspicious down the road, correct?</p> <p>14 A. Steve -- or Wayne didn't characterize it</p> <p>15 that way, no.</p> <p>16 Q. No, sir. Who changed Mr. Bancroft's</p> <p>17 language based on his work in this memorandum that</p> <p>18 an order that was flagged as a result of his</p> <p>19 algorithm was no longer suspicious if it was</p> <p>20 reduced?</p> <p>21 A. I don't know.</p> <p>22 MR. BENSINGER: Mr. Mougey.</p> <p>23 MR. MOUGEY: Allow me to just finish, please,</p> <p>24 sir.</p>
Page 235	Page 237
<p>1 BY THE WITNESS:</p> <p>2 A. I'm sorry. Can you repeat the question.</p> <p>3 BY MR. MOUGEY:</p> <p>4 Q. Yes, sir. Mr. Bancroft, based on his</p> <p>5 work, along with Tracy Morris, determined that an</p> <p>6 order -- you know what? Let me ask the question</p> <p>7 another way.</p> <p>8 Mr. Bancroft and Tracy Morris' memo</p> <p>9 delivered to multiple departments at Walgreens</p> <p>10 determined that an order that is flagged as a</p> <p>11 result of this algorithm is suspicious, correct,</p> <p>12 sir?</p> <p>13 A. I think what he was attempting to</p> <p>14 identify here were possible suspicious orders that</p> <p>15 we would, as we see later in the development of</p> <p>16 this system, that we would then flag for additional</p> <p>17 review.</p> <p>18 Q. Sir, you see "suspicious orders" under</p> <p>19 "Deliverable," correct?</p> <p>20 A. Correct.</p> <p>21 Q. You see in the very first sentence</p> <p>22 "orders" and then "suspicious activity," correct,</p> <p>23 sir?</p> <p>24 A. Correct.</p>	<p>1 BY MR. MOUGEY:</p> <p>2 Q. And, sir, you understand that as part of</p> <p>3 your duty today to be prepared to testify on</p> <p>4 Walgreens' positions that we are entitled to an</p> <p>5 answer on the standards and metrics used to</p> <p>6 identify orders of unusual size, orders deviating</p> <p>7 substantially from a normal pattern and orders of</p> <p>8 unusual frequency, correct, sir?</p> <p>9 A. Correct.</p> <p>10 Q. And, sir, you can't tell me what input</p> <p>11 went into changing Mr. Bancroft's memorandum that</p> <p>12 orders that were flagged as a result of his</p> <p>13 algorithm were no longer suspicious, correct?</p> <p>14 A. I can't --</p> <p>15 MR. BENSINGER: Objection; vague.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I can't point to any specific</p> <p>18 determination.</p> <p>19 BY MR. MOUGEY:</p> <p>20 Q. You don't know the answer?</p> <p>21 A. No.</p> <p>22 MR. BENSINGER: Mr. Mougey, should we go off</p> <p>23 the record, take a short break?</p> <p>24 MR. MOUGEY: Sounds good. Thank you.</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 238</p> <p>1 THE VIDEOGRAPHER: We are off the record at 2 3:06 p m. 3 (WHEREUPON, a recess was had 4 from 3:06 to 3:18 p m.) 5 THE VIDEOGRAPHER: We are back on the record 6 at 3:18 p m. 7 SPECIAL MASTER COHEN: Just to explain how 8 this is going to happen going forward. I've ruled 9 that Plaintiff is allowed, instead of seven hours, 10 eight hours of deposition time. He can split up 11 that deposition time any way he chooses. 12 In other words, this -- today's 13 deposition will be recessed. It will resume with 14 the remaining time. And that is in order to allow 15 Plaintiffs' counsel to review the documents he was 16 just given, and the parties will work together to 17 find a time when that resumed deposition will take 18 place, preferably after the Defendants' document 19 production and responses to Interrogatories are 20 complete. 21 And because it's a relatively short 22 period of time, the hope is that that perhaps can 23 be piggybacked with another deposition here in 24 Chicago.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. That's not the question I asked you. 2 The question that I asked you was: If 3 Walgreens identifies an order as suspicious, it 4 needs to report it to the DEA when discovered, 5 correct? 6 MR. BENSINGER: Objection; vague. You can 7 answer. 8 BY THE WITNESS: 9 A. If it's a confirmed suspicious order, I 10 would believe the answer is yes. 11 BY MR. MOUGEY: 12 Q. And if Walgreens is not reporting 13 suspicious orders to the DEA as they are 14 discovered, it is not fulfilling its obligations as 15 a distributor, correct, sir? 16 MR. BENSINGER: Objection. That calls for a 17 legal conclusion and violates the Special Master's 18 order on scope. 19 SPECIAL MASTER COHEN: Sustained. 20 BY MR. MOUGEY: 21 Q. You understand that Walgreens has 22 obligations as a distributor, correct? 23 A. Yes. 24 Q. And where does -- and Walgreens</p>
<p style="text-align: right;">Page 239</p> <p>1 Everybody understand? 2 MR. MOUGEY: Yes, sir. 3 SPECIAL MASTER COHEN: Okay. 4 BY MR. MOUGEY: 5 Q. Mr. Bratton, if an order is identified 6 as suspicious, it would need to be reported to the 7 DEA, correct? 8 MR. BENSINGER: Objection; calls for a legal 9 conclusion. 10 BY THE WITNESS: 11 A. If it was confirmed to be suspicious -- 12 I'm sorry. At which time frame are you? 13 BY MR. MOUGEY: 14 Q. Does it matter? If Walgreens identifies 15 an order as suspicious, it's required to report it 16 to the DEA, correct? 17 MR. BENSINGER: Objection; calls for legal 18 conclusion. You may answer. 19 BY THE WITNESS: 20 A. If we were previously reporting orders 21 that we thought may be suspicious prior to 22 December -- November of '12, after that point we 23 would report confirmed orders. 24 BY MR. MOUGEY:</p>	<p style="text-align: right;">Page 241</p> <p>1 understands that those responsibilities are defined 2 in places like the Controlled Substance Act, 3 correct? 4 A. Correct. 5 Q. And that Walgreens' obligations are 6 further refined under the Code of Federal 7 Regulations that are promulgated under the 8 Controlled Substance Act, correct? 9 A. Correct. 10 Q. And in order to or for Walgreens to 11 fulfill its obligations as a distributor, Walgreens 12 needs to understand what its roles and 13 responsibilities are, correct, sir? 14 A. Correct. 15 Q. And, sir, Walgreens understands that in 16 order to fulfill its obligations as a distributor, 17 one of its jobs is to report suspicious orders to 18 the DEA, correct, sir? 19 A. Correct. 20 Q. And if it doesn't report suspicious 21 orders to the DEA, it has not fulfilled its 22 obligation as a distributor, correct? 23 MR. BENSINGER: Same objection. 24 MR. MOUGEY: I have danced and tried to make</p>



## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 242</p> <p>1 them as happy as --</p> <p>2 SPECIAL MASTER COHEN: Sustained.</p> <p>3 MR. MOUGEY: I did not mention -- Special</p> <p>4 Master Cohen, I haven't mentioned the CSA. I</p> <p>5 haven't mentioned the regs. I'm asking what his</p> <p>6 understanding of what the industry standards are.</p> <p>7 I didn't even mention the code. I didn't mention</p> <p>8 his interpretation.</p> <p>9 SPECIAL MASTER COHEN: You need to move on</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. How does Walgreens understand what its</p> <p>12 roles and responsibilities are as a distributor?</p> <p>13 Where does it go to figure that out?</p> <p>14 MR. BENSINGER: Objection; vague. You can</p> <p>15 answer.</p> <p>16 BY THE WITNESS:</p> <p>17 A. Communications with other members in the</p> <p>18 industry, communications that we receive from the</p> <p>19 DEA either through inspections, letters,</p> <p>20 conferences that we attend, e-mails, communication.</p> <p>21 Conglomerate of a multitude of sources.</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. All right. So, that's a good example,</p> <p>24 letters, communications with the DEA helps</p>	<p style="text-align: right;">Page 244</p> <p>1 the less formal relationships with other</p> <p>2 distributors?</p> <p>3 MR. BENSINGER: Objection; calls --</p> <p>4 BY THE WITNESS:</p> <p>5 A. It can --</p> <p>6 MR. BENSINGER: Objection; calls for</p> <p>7 speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I think it can help us try to clarify</p> <p>10 what the requirements are.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. The relationships and the communications</p> <p>13 with other distributors?</p> <p>14 A. Or other pharmacies, et cetera.</p> <p>15 Q. Help -- the relationships with other</p> <p>16 pharmacies and other distributors help clarify what</p> <p>17 Walgreens' responsibilities are as a distributor.</p> <p>18 Is that your testimony, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Sir, the memo that we just left, Bratton</p> <p>21 22. I'm going to hand you what I'm going to mark</p> <p>22 as Bratton 30(b)(6) 23.</p> <p>23 (WHEREUPON, a certain document was</p> <p>24 marked as Bratton 30(b)(6) Exhibit</p>
<p style="text-align: right;">Page 243</p> <p>1 Walgreens understand its roles and responsibilities</p> <p>2 as a distributor, correct, sir?</p> <p>3 A. That's one of the ways that we can seek</p> <p>4 to understand.</p> <p>5 Q. And you mentioned organizations.</p> <p>6 Industry organizations, correct?</p> <p>7 A. Correct.</p> <p>8 Q. What industry organizations are you</p> <p>9 referring to?</p> <p>10 A. So, there have been times at NACDS,</p> <p>11 which is the National Association of Chain Drug --</p> <p>12 National Association of Chain Drug Stores, there</p> <p>13 have been times when the DEA has presented at those</p> <p>14 trade organizations -- meetings.</p> <p>15 Q. What other trade organizations that</p> <p>16 Walgreens belonged to that it believes helps</p> <p>17 identify what its roles and responsibilities are as</p> <p>18 a distributor?</p> <p>19 A. Additionally, we participate with the</p> <p>20 National Association of Boards of Pharmacies, and</p> <p>21 then we have less formal relationships with other</p> <p>22 companies within the industry where we might share</p> <p>23 information.</p> <p>24 Q. And that helps set industry standards,</p>	<p style="text-align: right;">Page 245</p> <p>1 No. 23: 10/01/09 Project Request</p> <p>2 Estimate; WAGMDL00492070 -</p> <p>3 00492072.)</p> <p>4 BY MR. MOUGEY:</p> <p>5 Q. 23 is a little more than a year later</p> <p>6 than the memo drafted by Wayne Bancroft on June 23,</p> <p>7 2008, correct?</p> <p>8 A. Correct.</p> <p>9 Q. And in the memo on 23 there is an update</p> <p>10 on the different phases of the suspicious order</p> <p>11 algorithm, correct, sir?</p> <p>12 A. Correct.</p> <p>13 Q. And under "Description" in this update</p> <p>14 on the algorithm, "Create a process to</p> <p>15 systematically identify and prevent suspicious</p> <p>16 orders for C-II and PSE drug items." Correct?</p> <p>17 A. Yes, that's what's on the page.</p> <p>18 Q. So, as of October of 2009, a year after</p> <p>19 the first memo, the algorithm was still designed to</p> <p>20 identify and prevent suspicious orders, correct?</p> <p>21 A. Correct. However, it was in testing and</p> <p>22 this neither specifies probable or confirmed</p> <p>23 suspicious orders.</p> <p>24 Q. And this doesn't make any distinction in</p>

## Highly Confidential - Subject to Further Confidentiality Review

Page 246	Page 248
<p>1 this October 1, 2009 memorandum between probable or</p> <p>2 potential suspicious orders. It just simply says</p> <p>3 an order that is flagged as a result of the</p> <p>4 algorithm is suspicious, correct, sir?</p> <p>5 MR. BENSINGER: Object to the characterization.</p> <p>6 BY THE WITNESS:</p> <p>7 A. It says here, "Any orders that are</p> <p>8 deemed suspicious will be flagged as suspicious and</p> <p>9 populated in a file to be sent to LP and Rx</p> <p>10 Services for review and analysis."</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. Do you agree that that is an accurate</p> <p>13 statement about what the algorithm was designed to</p> <p>14 do?</p> <p>15 A. That it would flag them as suspicious?</p> <p>16 Again, I think there is a distinction here as</p> <p>17 potentially or confirmed suspicious. And, again,</p> <p>18 this was during the testing period. But yes.</p> <p>19 Q. Let's go through it sentence by</p> <p>20 sentence. The second sentence says, "An order</p> <p>21 quantity will be deemed suspicious based on a</p> <p>22 formula." Correct, sir?</p> <p>23 A. It does say.</p> <p>24 Q. Is that an accurate statement that an</p>	<p>1 this document, a programmer analyst, is in a</p> <p>2 position to delineate the entire corporate policy</p> <p>3 of Walgreens, no.</p> <p>4 Q. So, the simple answer is, in addition to</p> <p>5 Mr. Bancroft, Mr. Khanna is wrong too, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Yes, sir. So, this is the second</p> <p>8 document that is incorrect that an order flagged by</p> <p>9 the system is suspicious, correct, sir?</p> <p>10 A. Probable suspicious would be a correct</p> <p>11 characterization. I don't -- again, I think there</p> <p>12 is a distinction between confirmed and probable</p> <p>13 that is not discussed in this document.</p> <p>14 Q. Yes, sir. But the question I asked was:</p> <p>15 This is the second document in a row that we've</p> <p>16 looked at that you believe is incorrect that</p> <p>17 designates an order flagged by the algorithm as</p> <p>18 suspicious, correct, sir? Yes or no.</p> <p>19 A. Neither of these documents I think make</p> <p>20 any distinction between possible and confirmed</p> <p>21 suspicious orders.</p> <p>22 Q. So, the simple answer to my question is</p> <p>23 yes, that is the second document in a row that</p> <p>24 we've looked at that have incorrectly stated that</p>
Page 247	Page 249
<p>1 order quantity will be deemed suspicious based on a</p> <p>2 formula used to determine inconsistent ordering</p> <p>3 patterns?</p> <p>4 A. That's what's on the page.</p> <p>5 Q. Is that accurate? Does Walgreens</p> <p>6 believe that statement is accurate, that an order</p> <p>7 that was flagged as a result of the algorithm will</p> <p>8 be deemed suspicious based on that formula?</p> <p>9 A. I believe that our position is that it</p> <p>10 is a probable, not confirmed suspicious order.</p> <p>11 Q. Can you point me to anywhere -- well,</p> <p>12 let's just keep going.</p> <p>13 The next sentence, "Any orders that are</p> <p>14 deemed suspicious will be flagged as suspicious."</p> <p>15 Correct?</p> <p>16 A. Correct.</p> <p>17 Q. And the orders that are deemed</p> <p>18 suspicious are orders that were flagged as a result</p> <p>19 of the formula, correct?</p> <p>20 A. Correct.</p> <p>21 Q. So, you believe that's an inaccurate</p> <p>22 statement of the policies as implemented by</p> <p>23 Walgreens, correct, sir?</p> <p>24 A. I don't think that Rakesh, the author of</p>	<p>1 an order flagged by the system is deemed</p> <p>2 suspicious, correct?</p> <p>3 A. They have failed to make a distinction</p> <p>4 between probable and confirmed. Both documents.</p> <p>5 Q. So, they are incorrect?</p> <p>6 A. They are incomplete.</p> <p>7 Q. So, sir, let me hand you what I'm going</p> <p>8 to mark as Bratton 24, which is dated 2/8/2012.</p> <p>9 (WHEREUPON, a certain document was</p> <p>10 marked as Bratton 30(b)(6) Exhibit</p> <p>11 No. 24: 2/8/12 e-mail with</p> <p>12 attachment; WAGMDL00325129 -</p> <p>13 00325130.)</p> <p>14 BY MR. MOUGEY:</p> <p>15 Q. You see, sir, that this isn't from one</p> <p>16 of the algorithm or one of the tech folks. This is</p> <p>17 from Barbara Martin, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Ms. Martin that you've been citing all</p> <p>20 day long about interview process, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And this is dated 2/8 of 2012. Do you</p> <p>23 see that?</p> <p>24 A. Correct.</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 250</p> <p>1 Q. Almost three and a half years after the</p> <p>2 first memo we looked at with Wayne Bancroft,</p> <p>3 correct, sir?</p> <p>4 A. Correct.</p> <p>5 Q. And Ms. Martin, the subject, and</p> <p>6 attaches a document entitled "Suspicious Order</p> <p>7 Monitoring Process," correct?</p> <p>8 A. Correct.</p> <p>9 Q. And she sent this to Denman Murray. And</p> <p>10 who is Denman Murray?</p> <p>11 A. Her boss.</p> <p>12 Q. You don't think she'd send her boss</p> <p>13 something that was incorrect or inaccurate, right?</p> <p>14 A. I don't know.</p> <p>15 Q. I mean, you wouldn't expect Ms. Martin</p> <p>16 is -- "Suspicious Order Monitoring Process,"</p> <p>17 page 2. Do you see the title?</p> <p>18 A. I do.</p> <p>19 Q. "Current Process." Fourth bullet down.</p> <p>20 "Original project design was to prevent the DCs</p> <p>21 from filling any potential suspicious order."</p> <p>22 Do you see that?</p> <p>23 A. I do.</p> <p>24 Q. "And to capture the data to identify</p>	<p style="text-align: right;">Page 252</p> <p>1 was that if we reduced the order, it was not</p> <p>2 suspicious.</p> <p>3 Q. That's not what I asked. I said if the</p> <p>4 orders were deemed suspicious that were flagged by</p> <p>5 the algorithm, they were required to be reported to</p> <p>6 the DEA, correct, sir?</p> <p>7 MR. BENSINGER: Objection; calls for a legal</p> <p>8 conclusion and a violation of the Walmart ruling by</p> <p>9 Special Master Cohen on interpretation.</p> <p>10 SPECIAL MASTER COHEN: I'll allow it as asked.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I'm not sure that it was clear to us if</p> <p>13 it was or it was not suspicious. Again, we were</p> <p>14 reaching out to the DEA and asking for clarity,</p> <p>15 trying to discuss with field agents and receiving a</p> <p>16 variety of responses.</p> <p>17 So, our reporting stance at that time</p> <p>18 was orders that are possibly suspicious are</p> <p>19 reported in the Appendix E-3 report and these were</p> <p>20 not.</p> <p>21 BY MR. MOUGEY:</p> <p>22 Q. But that's not what I asked.</p> <p>23 What I asked you, sir, was: If the</p> <p>24 orders were deemed suspicious that were flagged</p>
<p style="text-align: right;">Page 251</p> <p>1 stores with potentially suspicious activity for</p> <p>2 loss prevention team to investigate." Correct?</p> <p>3 A. Correct.</p> <p>4 Q. And underneath the "Enhancements," "The</p> <p>5 system will identify stores that had order quantity</p> <p>6 decreased and then placed order to vendor."</p> <p>7 Correct?</p> <p>8 A. Correct.</p> <p>9 Q. So, between 2009 and 2012, when did</p> <p>10 Walgreens decide that orders flagged from the</p> <p>11 algorithm were no longer suspicious because they</p> <p>12 had been cut?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know?</p> <p>15 A. I don't know.</p> <p>16 Q. Because if they were deemed suspicious,</p> <p>17 orders that were flagged from the algorithm, they</p> <p>18 were required to be reported to the DEA, correct,</p> <p>19 sir?</p> <p>20 MR. BENSINGER: Objection; argument and calls</p> <p>21 for a legal conclusion, scope.</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. Do you need me to redo the question?</p> <p>24 A. I believe that our position at that time</p>	<p style="text-align: right;">Page 253</p> <p>1 from the algorithm, they were required to be</p> <p>2 reported to the DEA, correct, sir?</p> <p>3 MR. BENSINGER: Asked and answered and same</p> <p>4 objection.</p> <p>5 BY THE WITNESS:</p> <p>6 A. I would -- my belief, I think what our</p> <p>7 position is was that if they were confirmed</p> <p>8 suspicious after an investigation, they should be</p> <p>9 reported.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. But that's a little different than the</p> <p>12 question I asked. Okay. If you think the answer</p> <p>13 is no, that's okay.</p> <p>14 But what I asked was: If the orders</p> <p>15 were deemed suspicious that were flagged from the</p> <p>16 algorithm, they were required to be reported to the</p> <p>17 DEA, correct?</p> <p>18 MR. BENSINGER: I continue to object on the</p> <p>19 ground Mr. Mougey is seeking to elicit an</p> <p>20 interpretation of regulations and a legal</p> <p>21 conclusion, not fact testimony about Walgreens'</p> <p>22 practices. And so I object.</p> <p>23 BY MR. MOUGEY:</p> <p>24 Q. It's the same question I've asked four</p>



## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 254</p> <p>1 or five times in a row.</p> <p>2 A. No, I don't believe they were required</p> <p>3 to be reported.</p> <p>4 Q. All right. We've now gone through phase</p> <p>5 1 through 3.</p> <p>6 A. 4.</p> <p>7 Q. I'm sorry. Phase 1 through 4. Thank</p> <p>8 you.</p> <p>9 What time frame was 4 initiated?</p> <p>10 A. 4 was deployed August '12. So, two,</p> <p>11 three months after the previous version. And then</p> <p>12 5, it was in effect through November '12 when</p> <p>13 version 5 came online.</p> <p>14 Q. And what was the difference with phase 4</p> <p>15 from phase 3?</p> <p>16 A. It incorporated vendor orders and</p> <p>17 partial fills to make them eligible for flagging or</p> <p>18 reduction.</p> <p>19 So, my understanding is 3 considered</p> <p>20 vendor orders in its calculation, 4 would flag or</p> <p>21 reduce vendor orders as well as our own DC orders.</p> <p>22 Q. I'm a little confused. Help me with</p> <p>23 what vendors.</p> <p>24 So, up until June of 2012 with this</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. I didn't ask what that vendor did at</p> <p>2 their distribution center. We'll get into that</p> <p>3 later.</p> <p>4 What I'm asking you right now is</p> <p>5 Walgreens had absolutely zero policy and procedure</p> <p>6 in place in writing to detect pharmacies that --</p> <p>7 whose orders were being reduced by the algorithm at</p> <p>8 Walgreens and then ordering from another vendor up</p> <p>9 to June of 2012, correct, sir?</p> <p>10 A. I -- no, I don't agree with that, and</p> <p>11 the reason -- the basis that I give for that is I</p> <p>12 believe that Barb and Marcy were seeing this type</p> <p>13 of activity, which is why we sought to include</p> <p>14 vendor orders in the system.</p> <p>15 Q. What makes you believe that Barb and</p> <p>16 Marcy -- Barb and Marcy must have been really busy.</p> <p>17 Barb and Marcy are everywhere, aren't they?</p> <p>18 MR. BENSINGER: Objection; argumentative.</p> <p>19 BY MR. MOUGEY:</p> <p>20 Q. They are. Barb and Marcy are filling a</p> <p>21 tremendous amount of roles in the suspicious</p> <p>22 ordering monitoring policies, aren't they?</p> <p>23 A. They are heavily involved with</p> <p>24 inventory --</p>
<p style="text-align: right;">Page 255</p> <p>1 whole algorithm, let's just say I come in with</p> <p>2 1,000 orders, it's flagged and reduced to 500, and</p> <p>3 I'm the pharmacist and I want to get that</p> <p>4 Schedule II or Schedule III.</p> <p>5 Can I just -- up until June of '12, can</p> <p>6 I just pick up and order from another vendor</p> <p>7 outside of Walgreens?</p> <p>8 A. It's possible. I know at some point we</p> <p>9 requested that our vendor no longer accept phone</p> <p>10 orders though I haven't been able to definitively</p> <p>11 establish when that occurred.</p> <p>12 Q. Let's do it another way.</p> <p>13 Does Walgreens' system detect that when</p> <p>14 an order has been flagged as a result of the</p> <p>15 algorithm and reduced, up until June of '12, can a</p> <p>16 pharmacist then order from another vendor?</p> <p>17 A. Yes.</p> <p>18 Q. And there was no monitoring of that</p> <p>19 pharmacist ordering from another vendor once their</p> <p>20 order had been reduced by Walgreens?</p> <p>21 A. I believe that Barb and Marcy were</p> <p>22 looking at reports related to that. I can't</p> <p>23 comment on what monitoring the vendor did at their</p> <p>24 distribution center.</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. Two people?</p> <p>2 A. -- and suspicious order monitoring.</p> <p>3 Q. Yes, sir. Two people at the -- at that</p> <p>4 level are filling multiple roles in an operation</p> <p>5 that has anywhere, depending on the time frame, 5,</p> <p>6 6, 7,000, stores, correct?</p> <p>7 A. Correct.</p> <p>8 Q. 200,000 people and it's Barb and Marcy,</p> <p>9 right, in a lot of the answers today, correct?</p> <p>10 MR. BENSINGER: Objection.</p> <p>11 BY MR. MOUGEY:</p> <p>12 Q. So, what was the system in place at</p> <p>13 Walgreens when it cut an order as a result of its</p> <p>14 algorithm and reduced it to monitor a pharmacist</p> <p>15 from going to another vendor like a Cardinal or</p> <p>16 AmeriSource or Anda and ordering from that vendor?</p> <p>17 A. I believe that it was -- they would</p> <p>18 monitor those as part of the audits, the</p> <p>19 retrospective audits.</p> <p>20 Q. "I believe" sounds to me like a guess.</p> <p>21 What policy and procedure is in place</p> <p>22 that would oversee a pharmacist whose order was cut</p> <p>23 and flagged by the algorithm from ordering from</p> <p>24 another vendor up until June of 2012?</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 258</p> <p>1 A. Only the retrospective review that would</p> <p>2 have been performed by loss prevention and</p> <p>3 inventory.</p> <p>4 Q. And retrospective review, how often is</p> <p>5 that?</p> <p>6 A. They told me that this was occurring</p> <p>7 monthly.</p> <p>8 Q. What I asked was what -- not what they</p> <p>9 told you, not what somebody said. I want to know</p> <p>10 what written policies and procedures were in place</p> <p>11 at Walgreens to detect when a pharmacist whose</p> <p>12 order had been rejected and cut down as part of the</p> <p>13 algorithm and then placed the order at another</p> <p>14 vendor like a Cardinal, Anda or AmerisourceBergen,</p> <p>15 and the answer is there were none, correct, sir?</p> <p>16 A. I believe there were no written</p> <p>17 documents, no.</p> <p>18 Q. Thank you. You are familiar with the</p> <p>19 term "interstoring"?</p> <p>20 A. Correct.</p> <p>21 Q. Interstoring is when one Walgreens</p> <p>22 pharmacy would go to another Walgreens pharmacy to</p> <p>23 help fill an order, correct?</p> <p>24 A. Transfer product between two stores.</p>	<p style="text-align: right;">Page 260</p> <p>1 reduced?</p> <p>2 Not what somebody told you. Where is</p> <p>3 the written policy and procedure?</p> <p>4 A. I don't believe there is one for that</p> <p>5 time period.</p> <p>6 Q. Sir, isn't it also true that another</p> <p>7 exception from phase 1 through June of 2012 was</p> <p>8 that Rx Services would have the ability to remove</p> <p>9 items from the order limitation process or even to</p> <p>10 remove an entire store from the order limit program</p> <p>11 for a limited amount of time?</p> <p>12 MR. BENSINGER: Objection; compound.</p> <p>13 BY THE WITNESS:</p> <p>14 A. The -- I understand that they had the</p> <p>15 ability to, based on their judgment and evaluation</p> <p>16 of the store or the item, exempt it from this</p> <p>17 process, yes.</p> <p>18 Q. Let me make sure that we -- it's not</p> <p>19 compound so it's not confusing.</p> <p>20 Rx Services had the ability to remove</p> <p>21 items from the order limitation that was being</p> <p>22 monitored by Walgreens, correct?</p> <p>23 A. From the reduction, yes.</p> <p>24 Q. Yes, sir. And Rx Services also had the</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. That was another loophole in Walgreens'</p> <p>2 system when an order had been reduced, not filled,</p> <p>3 that a store could go to another store and</p> <p>4 interstore, correct?</p> <p>5 MR. BENSINGER: Objection; argumentative.</p> <p>6 BY THE WITNESS:</p> <p>7 A. There is a possibility that they could</p> <p>8 interstore product.</p> <p>9 BY MR. MOUGEY:</p> <p>10 Q. And what written system was in place at</p> <p>11 Walgreens to detect and monitor interstoring for</p> <p>12 Schedule II and III controlled substances up until</p> <p>13 June of 2012?</p> <p>14 A. Other than the retrospective review, I</p> <p>15 don't believe there was a process to prevent them</p> <p>16 from interstoring at that time.</p> <p>17 Q. And I understand that's what people have</p> <p>18 told you about the retrospective review, but the</p> <p>19 question I asked you was a little different.</p> <p>20 What written policies and procedures</p> <p>21 were in place to monitor for interstoring, one</p> <p>22 Walgreens goes to another Walgreens and gets</p> <p>23 Schedule II or Schedule III opiates, after its</p> <p>24 order had been flagged by the algorithm and</p>	<p style="text-align: right;">Page 261</p> <p>1 ability to remove from the reduction an entire</p> <p>2 store?</p> <p>3 A. Correct, based on their evaluation of</p> <p>4 that store.</p> <p>5 Q. What other loopholes other than the</p> <p>6 ability to remove a store, the ability to remove</p> <p>7 items, interstore, and the ability of a pharmacist</p> <p>8 to order from another distributor, what other</p> <p>9 loopholes are you aware of?</p> <p>10 MR. BENSINGER: Objection; argument.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I believe that there is legitimate</p> <p>13 reasons why stores might be removed from the</p> <p>14 reduction or certain items based on a variety of</p> <p>15 factors. However, I'm not aware of any additional</p> <p>16 reasons that an order might not go through, so</p> <p>17 I'm...</p> <p>18 Q. Isn't it possible that the button on the</p> <p>19 computer interface could be turned off?</p> <p>20 A. By whom?</p> <p>21 MR. BENSINGER: Objection; vague.</p> <p>22 BY MR. MOUGEY:</p> <p>23 Q. By -- isn't it possible that a store was</p> <p>24 turned off from the DEA internal review on the</p>

Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 262</p> <p>1 algorithm? It's possible a store could just be 2 turned off from the system, correct? 3 A. My understanding would be that that's 4 possible based on exceptional circumstances. 5 Q. Like and those exceptional circumstances 6 are like weather? 7 A. No. That that store has a different 8 book of business that warrants more -- more of that 9 type of product, that it's either being removed 10 from or the item is being removed from. 11 Q. Sir, where are the written policies and 12 procedures that delineate when a store can be 13 removed because of its book of business? 14 A. I don't believe there is a written 15 policy. 16 Q. I'm going to come back to some of those 17 exceptions in a minute. If I could direct your 18 attention to P-WAG-18 and 19. 19 Mr. Bratton, I'm going to hand you what 20 I'm going to mark as Exhibit 25. 21 (WHEREUPON, a certain document was 22 marked as Bratton 30(b)(6) Exhibit 23 No. 25: July 2011, DEA Statistics; 24 WAGMDL00492171.)</p>	<p style="text-align: right;">Page 264</p> <p>1 A. Correct. 2 Q. That this is referencing. The 3 memorandum is referencing the algorithm all the way 4 back to the memo we saw in 2008. This is a 5 variation several steps down the road in July of 6 2011, correct? 7 MR. BENSINGER: Objection; foundation. 8 BY THE WITNESS: 9 A. It appears to be in 2011. 10 BY MR. MOUGEY: 11 Q. There is no other system in place at 12 this point in time other than the E-3 Chemical 13 Handler's, this and then the query that you 14 mentioned earlier, correct? 15 A. Not that I'm aware of, no. 16 Q. Yes, sir. So, according to this memo, 17 20,699 items are marked suspicious, right? 18 A. That's what it says, yes. 19 Q. Yes, sir. And those would be orders 20 that have been reduced and then filled, correct? 21 MR. BENSINGER: Objection; mischaracterization. 22 BY THE WITNESS: 23 A. I believe at this time they would be 24 reduced and filled.</p>
<p style="text-align: right;">Page 263</p> <p>1 BY MR. MOUGEY: 2 Q. July 11. Do you see that? 3 A. I do. 4 Q. "DEA Statistics," correct? 5 A. Correct. 6 Q. "How many orders are flagged each 7 month?" 8 According to this synopsis, in the month 9 of July, 20,699 items are marked suspicious, 10 correct? 11 A. It says that there, yes. 12 Q. And the next bullet, "For the orders 13 flagged, how many orders violated 1, 2 or all 3 14 flags?" 15 Do you see that? 16 A. I see that. 17 Q. And below are tolerance violation, 18 inventory violation and frequency violation, 19 correct? 20 A. Correct. 21 Q. So, this isn't the E-3 Chemical 22 Handler's Manual, correct? 23 A. Correct. 24 Q. This is the algorithm from Wayne, right?</p>	<p style="text-align: right;">Page 265</p> <p>1 BY MR. MOUGEY: 2 Q. But it was not, even though they are 3 being referred to as suspicious internally, these 4 orders were not reported to the DEA, correct, sir? 5 A. Correct. I think frequently internally 6 there is a conflation of probable suspicious and 7 confirmed suspicious. 8 Q. I hand you what we're going to mark as 9 Bratton 30(b)(6) 24 -- 26. I'm sorry. 10 (WHEREUPON, a certain document was 11 marked as Bratton 30(b)(6) Exhibit 12 No. 26: DEA Statistics; 13 WAGMDL00492169.) 14 BY MR. MOUGEY: 15 Q. Similar memo from August of 2011, 16 correct, sir? 17 A. It says it was for data in that month, 18 yes. 19 Q. Yes, sir. Which is the next month from 20 Bratton 23 we just looked at, correct? 21 A. Correct. 22 Q. Total of 40,176 items are marked 23 suspicious, correct? 24 A. That's what it says there.</p>

67 (Pages 262 to 265)

## Highly Confidential - Subject to Further Confidentiality Review

Page 266	Page 268
<p>1 Q. And, again, we see below, tolerance</p> <p>2 violation, inventory adjustments and frequency</p> <p>3 violations, correct?</p> <p>4 A. Correct.</p> <p>5 Q. That is very similar to the algorithm</p> <p>6 drafted by Mr. Bancroft back in 2008, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And similar to the last month, the</p> <p>9 orders that are flagged and then reduced internally</p> <p>10 are being referred to as suspicious, correct, sir?</p> <p>11 A. That's how they refer to them here, yes.</p> <p>12 Q. And if you look all the way at the</p> <p>13 bottom of that page, do you see the 102,116?</p> <p>14 A. Correct.</p> <p>15 Q. So, there had been 102,000 orders at the</p> <p>16 time of this August '11 e-mail that had been cut</p> <p>17 and reduced but not reported to the DEA because</p> <p>18 they were not suspicious, correct, sir?</p> <p>19 MR. BENSINGER: Objection; mischaracterization.</p> <p>20 BY THE WITNESS:</p> <p>21 A. It appears that there had been 102,000</p> <p>22 that had been cut and reduced up until this time.</p> <p>23 BY MR. MOUGEY:</p> <p>24 Q. Yes, sir. There had been 102,000 orders</p>	<p>1 retrospectively?</p> <p>2 A. A portion. They looked at a sample.</p> <p>3 Q. Yes, sir. Another potential weakness in</p> <p>4 Walgreens' system is the overrides, correct, sir?</p> <p>5 A. I'm not sure what you mean by that.</p> <p>6 Q. Do you know what Walgreens referred to</p> <p>7 as overrides?</p> <p>8 A. At what time?</p> <p>9 Q. Up until 2012.</p> <p>10 A. So, my understanding is that stores or</p> <p>11 pharmacy supervisors could request an override</p> <p>12 based on circumstances at the store. That's my</p> <p>13 understanding.</p> <p>14 Q. So, we have gone through interstoring.</p> <p>15 We've gone through calling another vendor. We've</p> <p>16 gone through a store being removed from the system.</p> <p>17 The pharmacist can also call and ask for</p> <p>18 an override, correct?</p> <p>19 A. Correct. However, that has to be</p> <p>20 approved by field leadership and the -- at one time</p> <p>21 the inventory team and at a later date the</p> <p>22 Rx Integrity team.</p> <p>23 Q. And just in Cleveland and Cuyahoga, from</p> <p>24 2006 to 2013, early '14, when Walgreens stopped</p>
Page 267	Page 269
<p>1 up and to this time in August of 2011 that had been</p> <p>2 flagged, cut, reduced and, according to the</p> <p>3 practices of Walgreens, not reported to the DEA as</p> <p>4 suspicious, correct, sir?</p> <p>5 A. Correct.</p> <p>6 Q. And, sir, by looking at this memo, do</p> <p>7 you have any understanding of how far back in time</p> <p>8 the 102,000 went?</p> <p>9 A. I would -- not based only on this memo,</p> <p>10 no.</p> <p>11 Q. Where was Walgreens recording the number</p> <p>12 of orders that had been flagged, reduced and not</p> <p>13 shipped?</p> <p>14 A. Based on conversations with Steve</p> <p>15 Bamberg and others in the IT apparatus, I believe</p> <p>16 that there is reporting that existed on a server</p> <p>17 called ADR 4 or ADR 7. I'm not sure which one.</p> <p>18 And I know that Barb would pull data from that to</p> <p>19 review. So, I think that that's where that</p> <p>20 information was kept.</p> <p>21 Q. So, Barb and -- sorry. Marcy?</p> <p>22 A. Yes.</p> <p>23 Q. Barb and Marcy are the ones responsible</p> <p>24 for those 102,000 orders, looking at those</p>	<p>1 distributing, do you have any idea how many times</p> <p>2 the stores in those two counties called and asked</p> <p>3 and were approved for overrides?</p> <p>4 A. I do not know the number.</p> <p>5 Q. Have you seen documents that evidence</p> <p>6 the number of overrides?</p> <p>7 A. I don't. I don't recall.</p> <p>8 Q. Does Walgreens have policies and</p> <p>9 procedures in place in writing about what the</p> <p>10 criteria for those overrides are?</p> <p>11 A. For certain, in 2013. Prior to that,</p> <p>12 there may be. One moment.</p> <p>13 There are documents that describe the</p> <p>14 process of requesting an override, but I don't know</p> <p>15 that we have it in the 2012 time period documents</p> <p>16 that describe how inventory would make the</p> <p>17 determination to override or not to override other</p> <p>18 than in collaboration with the pharmacy supervisor.</p> <p>19 Q. Or what the criteria is for that</p> <p>20 override, whether it's approved or not approved in</p> <p>21 kind of a Walgreens policies and procedures on when</p> <p>22 to approve an override and when not to approve an</p> <p>23 override, correct?</p> <p>24 A. Correct.</p>

## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 270</p> <p>1 Q. And the section that you're referring to</p> <p>2 is simply a how do you go about filling out the</p> <p>3 right section on the Walgreens intranet to request</p> <p>4 the override, right?</p> <p>5 A. Correct.</p> <p>6 Q. More of an automation process, not</p> <p>7 necessarily the policies and procedures on when it</p> <p>8 is appropriate, right?</p> <p>9 A. Correct.</p> <p>10 MR. MOUGEY: I think this is a good time for a</p> <p>11 break if it's all right with everybody else.</p> <p>12 THE VIDEOGRAPHER: We are off the record at</p> <p>13 3:56 p m.</p> <p>14 (WHEREUPON, a recess was had</p> <p>15 from 3:56 to 4:17 p m.)</p> <p>16 THE VIDEOGRAPHER: We are back on the record</p> <p>17 at 4:17 p m.</p> <p>18 BY MR. MOUGEY:</p> <p>19 Q. Mr. Bratton, I'd like to finish up this</p> <p>20 chart to make sure I got everything here.</p> <p>21 Phase 4, I have August '12, and I</p> <p>22 apologize because I think you already told me, but</p> <p>23 how long did phase 4 -- August '12 to when?</p> <p>24 A. November '12.</p>	<p style="text-align: right;">Page 272</p> <p>1 sometime in 11/12?</p> <p>2 A. November '12, yeah.</p> <p>3 Q. November '12, okay. Tell me what was</p> <p>4 different in phase 5 from phase 4.</p> <p>5 A. The biggest -- well, there is a couple</p> <p>6 differences.</p> <p>7 First is that the frequency calculation</p> <p>8 was replaced instead with a ceiling calculation,</p> <p>9 and what that ceiling does is it considers the</p> <p>10 amount of orders and the quantity of those orders</p> <p>11 over a period of time as opposed to just how often</p> <p>12 an order was placed irregardless of its size.</p> <p>13 Q. Okay. Anything else?</p> <p>14 A. So, I believe at this point the system</p> <p>15 would flag orders and reduce them to zero, and that</p> <p>16 at that point the store -- we removed the frequency</p> <p>17 threshold because it was superseded by ceiling.</p> <p>18 Q. Flag and replace to zero. Explain to</p> <p>19 that?</p> <p>20 A. So, whereas previously the orders were</p> <p>21 cut to the quantity that the system -- so,</p> <p>22 previously if you had a limit of 5 and you tried to</p> <p>23 order 10, it would reduce it to 5.</p> <p>24 Q. Okay.</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. Till November. Okay.</p> <p>2 And your understanding is that the</p> <p>3 change in the criteria on phase 4 was that vendor</p> <p>4 orders and partial fills were now under the DEA</p> <p>5 requirement umbrella or were monitored, correct?</p> <p>6 A. Correct.</p> <p>7 Q. Tell me what the partial fill portion is</p> <p>8 because I'm not -- I don't recall that.</p> <p>9 A. When a prescription in the front end is</p> <p>10 marked as a partial fill or out of stock, it</p> <p>11 reduces the -- the system thinks that the pharmacy</p> <p>12 is out. They may not actually be. That may not</p> <p>13 even be the store's intention. They may just not</p> <p>14 have enough to fill the complete quantity. And</p> <p>15 that could trigger a replenishment order. And, so,</p> <p>16 I think that they were ensuring that it wasn't</p> <p>17 unduly weighing partial fills in the algorithm.</p> <p>18 Q. Okay. Any other changes in phase 4?</p> <p>19 A. No.</p> <p>20 Q. All right. We just briefly discussed</p> <p>21 interstoring. When was interstoring -- when did</p> <p>22 that become prohibited?</p> <p>23 A. I believe in phase 5.</p> <p>24 Q. Okay. And phase 5 begins then in --</p>	<p style="text-align: right;">Page 273</p> <p>1 A. Now it is reducing an order that exceeds</p> <p>2 the ceiling or tolerance to zero.</p> <p>3 Q. All right. Anything else?</p> <p>4 A. I believe around this time we began the</p> <p>5 process. So, we reduced their order to zero and</p> <p>6 then if they want to get additional product, they</p> <p>7 would have to --</p> <p>8 Q. Reorder?</p> <p>9 A. -- do an override request. If they just</p> <p>10 reordered, it would be cut to zero again.</p> <p>11 Q. Okay.</p> <p>12 A. So, that wouldn't help them really.</p> <p>13 They'd have to do an override request. And also I</p> <p>14 believe around the time this rolled out we began</p> <p>15 investigating those flagged orders, even if they</p> <p>16 were reduced to zero.</p> <p>17 Q. Okay. And, so, "Investigating orders</p> <p>18 that triggered algorithm." How does that sound?</p> <p>19 Order triggered by algorithm, by the algorithm, is</p> <p>20 that right?</p> <p>21 A. Correct.</p> <p>22 Q. And when you say "investigated," you</p> <p>23 mean due diligence?</p> <p>24 A. Correct.</p>



## Highly Confidential - Subject to Further Confidentiality Review

<p style="text-align: right;">Page 274</p> <p>1 Q. Were they then reported to the DEA?</p> <p>2 A. If they were confirmed suspicious, they</p> <p>3 would be reported to the DEA. Initially I believe</p> <p>4 by fax and then later by electronic fax to the</p> <p>5 field office that's relevant to the store's</p> <p>6 registration.</p> <p>7 Q. All right. Let me just go through what</p> <p>8 I just wrote down.</p> <p>9 "11/12." And I'm assuming phase 5</p> <p>10 lasted until Walgreens was no longer a distributor?</p> <p>11 A. There was a phase 6, but it had to do</p> <p>12 with improvements primarily to the -- in some</p> <p>13 documents they call it phase 6, but in other</p> <p>14 documents they call it phase 2 of the dashboard.</p> <p>15 Q. Right.</p> <p>16 A. And, so, it was primarily with how the</p> <p>17 Rx Integrity or inventory before that would view</p> <p>18 this information that the system was generating. I</p> <p>19 don't believe it impacted the functioning of the</p> <p>20 algorithm, though.</p> <p>21 Q. It was more of an interface issue?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. So, bear with me.</p> <p>24 11/12 till when, phase 5?</p>	<p style="text-align: right;">Page 276</p> <p>1 at 4:27 p.m.</p> <p>2 BY MR. MOUGEY:</p> <p>3 Q. All right. Mr. Bratton, you were in the</p> <p>4 middle of explaining to us that you still use the</p> <p>5 system today, but you're no longer a distributor.</p> <p>6 We don't report the orders and you were -- can you</p> <p>7 finish what you were explaining to us about the</p> <p>8 system and as it's in place until today?</p> <p>9 A. So, I just wanted to make the</p> <p>10 distinction that we continue to operate this</p> <p>11 system. However, as we're no longer a distributor,</p> <p>12 we don't report flagged orders to the DEA.</p> <p>13 Q. All right. So, the system in large part</p> <p>14 that you're using today as a -- in the dispensing</p> <p>15 capacity is almost identical to the system you were</p> <p>16 using as a distributor?</p> <p>17 A. Well, we still use it to evaluate orders</p> <p>18 before they're transmitted to ABC. It still</p> <p>19 relates to orders, not necessarily dispensing.</p> <p>20 But, yes. As a non-distributor.</p> <p>21 Q. Let's do it this way, then.</p> <p>22 So, the system that Walgreens is using</p> <p>23 today, the phase 1 through 5, the steps that you</p> <p>24 explained to us, are still being used today by</p>
<p style="text-align: right;">Page 275</p> <p>1 A. Till we ceased to be a distributor.</p> <p>2 Q. Pretty much till the end of the --</p> <p>3 till --</p> <p>4 A. 2014.</p> <p>5 Q. I'm going to just put "When Walgreens</p> <p>6 out of distribution business." Is that fair?</p> <p>7 A. For controlled substances, yes.</p> <p>8 Q. Yes. Thank you.</p> <p>9 A. So, we continue to use the system today,</p> <p>10 but as we are no longer a distributor, we don't</p> <p>11 report the orders, but we still have the system in</p> <p>12 place for --</p> <p>13 (WHEREUPON, there was a short</p> <p>14 interruption.)</p> <p>15 MR. MOUGEY: I hate to do this. It's Cohen.</p> <p>16 MR. BENSINGER: Should we go off the record</p> <p>17 for the housekeeping?</p> <p>18 MR. MOUGEY: Hey, David.</p> <p>19 THE VIDEOGRAPHER: Off the record at 4:23. Do</p> <p>20 you want it on?</p> <p>21 MR. MOUGEY: It's okay.</p> <p>22 (WHEREUPON, a recess was had</p> <p>23 from 4:23 to 4:27 p.m.)</p> <p>24 THE VIDEOGRAPHER: We are back on the record</p>	<p style="text-align: right;">Page 277</p> <p>1 Walgreens to fulfill its role even as a dispenser</p> <p>2 or a pharmacy, correct?</p> <p>3 A. I think that we have continued --</p> <p>4 MR. BENSINGER: Objection to form. Could I</p> <p>5 have that -- give me just a moment to look at this</p> <p>6 question, please.</p> <p>7 Objection to form based on the scope of</p> <p>8 the question.</p> <p>9 Do you have it in mind?</p> <p>10 THE WITNESS: What's that?</p> <p>11 MR. BENSINGER: Do you have the question in</p> <p>12 mind?</p> <p>13 THE WITNESS: No, I need it again.</p> <p>14 MR. BENSINGER: I objected to scope. You can</p> <p>15 answer.</p> <p>16 BY MR. MOUGEY:</p> <p>17 Q. So, the question I asked was that the</p> <p>18 system that Walgreens is using today as you</p> <p>19 described, phase 1 through 5, the steps that you</p> <p>20 explained to us, those are still being used today</p> <p>21 by Walgreens to fulfill its role even as a</p> <p>22 dispenser or a pharmacy, correct?</p> <p>23 A. I think that we continue to use it today</p> <p>24 out of an abundance of caution and as a good</p>

Highly Confidential - Subject to Further Confidentiality Review

Page 278

1 practice. I don't know that it's specifically  
2 related to any responsibility as a dispenser.  
3 Q. Okay. If it's not as a pharmacy or  
4 dispenser, what other capacity would Walgreens be  
5 using this system to discharge its duties on  
6 controlled substances?  
7 A. As I said, I think we continue to use it  
8 out of an abundance of caution. Also, I -- from my  
9 personal knowledge, my understanding is that it is  
10 for our Know Your Customer program of our  
11 distributor, they like that we have something in  
12 place to screen our orders.  
13 Q. Do any of the vendors that Walgreens  
14 uses -- forget it. Let me just go back.  
15 Talk about averages for a second and  
16 Wayne Bancroft's, essentially the metrics used in  
17 the algorithm as it changes over time. Okay?  
18 A. Um-hmm.

**REDACTED**

Page 280

1 A. Correct.  
2 Q. And I believe I've already passed -- I  
3 will make it a little easier. Bear with me. Let  
4 me find that.  
5 One of those examples would be in the  
6 controlled substance ordering that we have marked  
7 as 8, would it not?  
8 A. Of the -- of the linear regression?  
9 Q. Yes.  
10 A. This looks like a linear regression. I  
11 don't know if this is real data or, you know, made  
12 up. But this is what it would look like typically,  
13 what's on slide or I have Bates No. 7941.  
14 Q. And you're on Bates No. 7941?  
15 A. 667941. But in the exhibit that you  
16 provided.  
17 Q. Yes. Let's look at Exhibit 8. It's a  
18 different Bates number. The Bates number I'm  
19 looking at is 395925. Do you see it?  
20 A. Yes.  
21 Q. It's on "Phase 5 Functionality - Ceiling  
22 Calculation." Correct?  
23 A. Correct. Same one I was looking at in  
24 the other Bates number.

Page 281

1 Q. Okay. And part of your preparation  
2 today was to understand the metrics that were used  
3 as elaborated in (i) under the subject matters for  
4 testimony, correct?  
5 A. Correct.

**REDACTED**

21 Q. What impact would -- I'll tell you what.  
22 There are some charts in your production with  
23 the -- with a linear regression model graph,  
24 correct?

71 (Pages 278 to 281)

Highly Confidential - Subject to Further Confidentiality Review

Page 282

**REDACTED**

**REDACTED**

3 Q. So, what impact, if any, would increases  
4 in volume for controlled substances distributed by  
5 Walgreens have year to year on the line  
6 demonstrating the ceiling on Bates No. 925?

7 A. It's --

8 MR. BENSINGER: Objection; beyond the scope.

9 You can answer.

10 BY THE WITNESS:

**REDACTED**

7 Q. Do you recall anyone from in your  
8 preparation analyzing the impact of increasing  
9 dispensing of controlled substances, what impact  
10 that would have on the ceiling for Schedule II and  
11 III year to year?

12 A. Since the time that I have been  
13 involved, in February of '13, as a result of this  
14 system, you know, all the green dots in this chart  
15 are being cut off until they fall below this line.

16 We've generally seen almost all items  
17 declining, initially to great complaint by stores  
18 and in some cases patients and boards of  
19 pharmacies. And so I don't think that was  
20 happening. I don't recall if we specifically  
21 analyzed that exact thing, though.

22 Q. And I'm not asking you in your personal  
23 capacity when you began at Pharmaceutical  
24 Integrity.

72 (Pages 282 to 285)



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**



Highly Confidential - Subject to Further Confidentiality Review

**REDACTED**

